

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 5. DEPARTMENT OF AGRICULTURE STATE AGRICULTURAL LABORATORY

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| R3-5-101 | Amend |
| R3-5-102 | Amend |
| R3-5-103 | Amend |
| R3-5-104 | Amend |
| R3-5-105 | Repeal |
| R3-5-105 | New Section |
| R3-5-106 | Amend |
| R3-5-107 | Amend |
| R3-5-108 | Repeal |
| R3-5-109 | Repeal |
| R3-5-110 | Amend |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 3-147
Implementing statute: A.R.S. §§ 3-145, 3-146, 3-147, 3-148
- 3. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Shirley Conard, Rules Specialist
Address: Arizona Department of Agriculture
1688 West Adams, Room 124
Phoenix, Arizona 85007
Telephone: (602) 542-0962
Fax: (602) 542-5420
- 4. An explanation of the rule, including the agency's reasons for initiating the rule:**
This rulemaking clarifies existing language, updates definitions, adds licensing time-frames, and provides the State Agricultural Laboratory with responsibilities previously administered by the Arizona Department of Health and the Environmental Services Division of the Arizona Department of Agriculture.
R3-5-101. Definitions. This Section defines terms used within the Article
R3-5-102. Certification. This Section establishes the requirements for the certification of samplers and laboratories for agricultural services. The rule provides specific information required on an initial and renewal application for both a laboratory and certified sampler, specifies that a laboratory shall notify the Assistant Director within a specific time period when a change is made that affects the information on the application, and establishes time-frames pursuant to A.R.S. § 41-1092.
A.R.S. § 41-1072 et seq., requires agencies to adopt rules establishing time-frames for the granting or denial of licenses. A.R.S.

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§ 41-1001(11) defines a "license" as *the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission require by law, but it does not include a license required solely for revenue purposes.*

1. An "administrative completeness time-frame" (the time it takes the agency to determine if an application is complete);
2. A "substantive review time-frame" (the time it takes the agency to review the application and determine if the applicant meets the substantive criteria for licensure); and
3. An "overall time-frame" (a combination of the administrative completeness and substantive review time-frames.)

The law also requires an agency to notify applicants within the established time-frames, whether the application is complete (administrative completeness) and whether a license or certification is being issued (substantive review).

The State Agricultural Laboratory researched its certifications to determine whether they constituted a "license" as contemplated by A.R.S. § 41-1073. R3-4-102 contains the final listing, in the form of a matrix, of those licenses which fall under the requirements of the new law.

According to legislation, time-frames are required only for licenses that require an application for processing. A.R.S. § 41-1073 prescribes that . . . *[n]o later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time-frame during which the agency will either grant or deny each type of license that it issues.* The definition of "overall time-frame" is *the number of days after receipt of an application for a license during which an agency determines whether to grant or deny a license.* Determining whether a license required an application, or whether a license is summarily issued upon request is the basis for whether the State Agricultural Laboratory is required to develop time-frames.

The language of A.R.S. §41-1073(C) was carefully considered in reviewing and establishing the time-frames in R3-4-102. In particular, potential impact of delay on the regulated community is weighed against the resources of the agency. The time-frames given are the "maximum" to allow personnel to thoroughly analyze and verify information contained in the application. It is extremely rare that the fully allotted time-frames will be used.

Although the term "licenses" includes any agency permit, certificate, approval, registration, charter or similar form of permission required by law, The State Agricultural Laboratory issues only "certifications" and this rulemaking will reflect that term.

R3-5-103, Certified Services. This Section lists the laboratory testing and sampling services available for specific certification. The proposed rule provides the applicant with the opportunity of being certified in areas other than those listed.

R3-5-104, Fees. This Section establishes the fees for initial and renewal certification.

R3-5-105, Laboratory Requirements. This Section contains requirements for quality assurance, laboratory test results, sanitation, safety, and proficiency testing, which was edited and transferred from A.A.C. R9-17-315, Approved laboratories, and combined with current requirements in R3-5-105, Precision and accuracy control program; R3-5-108, Physical, sanitary and safety requirements; and R3-5-109, Granting of certification.

R3-5-106, Method of Analyzing and Testing. This Section establishes that the laboratory must either use procedures established by the State Agricultural Laboratory or obtain permission from the State Agricultural Laboratory to use published methods and procedures.

R3-5-107, Check Sample Testing Program. This Section explains the procedures involved in verifying that certified laboratories are performing properly. The proposed rulemaking describes the information currently required.

R3-5-108, Referee Laboratory. This Section establishes the guidelines when determining laboratory result disputes.

5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

N/A

6. The preliminary summary of the economic, small business, and consumer impact:

It is not anticipated that the adoption of these rules will have any impact on private industry, small business, or consumers. The licensing time-frames provides codification of the procedures currently observed by the State Agricultural Laboratory.

A. Estimated Costs and Benefits to the State Agricultural Laboratory.

This rulemaking will have no impact upon the State Agricultural Laboratory, other than it will remove unnecessary information from the Article, and add information and requirements already implemented by the State Agricultural Laboratory, thereby simplifying reporting requirements.

When the State Agricultural Laboratory receives incomplete applications, the laboratory either obtains the missing information by telephone, or sends the applicant a letter explaining what information is missing. R3-5-102(H) codifies the time-frames and procedures already observed by the State Agricultural Laboratory.

The State Agricultural Laboratory does not anticipate that penalties will be incurred for noncompliance with the overall time-frames, nor will additional costs be associated with this rulemaking.

B. Estimated Costs and Benefits to Political Subdivisions.

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Political subdivisions of this state are not directly affected by the implementation and enforcement of this rulemaking.

C. *Businesses Directly Affected By the Rulemaking.*

Any businesses applying for a certification will follow current procedures and practices and no additional cost or benefits shall occur. The proposed time-frames will provide an intangible benefit for these businesses by identifying the when the Laboratory will grant or deny a certification.

D. *Estimated Costs and Benefits to Private and Public Employment.*

Private and public employment are not directly affected by the implementation and enforcement of this rulemaking.

E. *Estimated Costs and Benefits to Consumers and the Public.*

Consumers and the public are not directly affected by the implementation and enforcement of this rulemaking.

F. *Estimated Costs and Benefits to State Revenues.*

This rulemaking will have no impact on state revenues unless the Department does not grant or deny a certification within the established time-frames and is required to refund fees and pay a penalty.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Shirley Conard
Address: Arizona Department of Agriculture
1688 West Adams, Room 124
Phoenix, Arizona 85007
Telephone: (602) 542-0962
Fax: (602) 542-5420

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: November 9, 1998
Time: 10 a.m.
Location: Arizona Department of Agriculture
1688 West Adams, Room 206
Phoenix, Arizona 85007
Nature: Public Hearing

Written comments on the proposed rules or preliminary economic, small business, and consumer impact statement must be received by 4:00 p.m., November 10, 1998. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the department's coordinator, Patrick Stevens, (602) 542-4316 (voice) or 1-800-367-3839 (TDD Relay). Requests should be made as early as possible to allow time to arrange the accommodation.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
None.

10. Incorporations by reference and their location in the rules:

R3-5-105(E) Identification and Listing of Hazardous Waste, 40 CFR 261, amended August 12, 1997, and Standards Applicable to Generators of Hazardous Waste 40 CFR 262, amended August 12, 1997.

11. The full text of the rules follows:

TITLE 3. AGRICULTURE

**CHAPTER 5. DEPARTMENT OF AGRICULTURE
STATE AGRICULTURAL LABORATORY**

**ARTICLE 1. SAMPLING AND LABORATORY
CERTIFICATION**

Section	
R3-5-101.	Definitions
R3-5-102.	Certification; application Renewal; Termination
R3-5-103.	Certified services <u>Services</u>
R3-5-104.	Fees
R3-5-105.	Precision and accuracy control program

R3-5-105.	Laboratory Requirements
R3-5-106.	Methodology <u>Methods of Analyzing and Testing</u>
R3-5-107.	Check sample testing program <u>Sample Testing Program</u>
R3-5-108.	Physical, sanitary and safety requirements
R3-5-109.	Granting of certification
R3-5-110.	Referee laboratory <u>Laboratory</u>

**ARTICLE 1. SAMPLING AND LABORATORY
CERTIFICATION**

R3-5-101. Definitions

- A. When used in this Article, words and terms defined in A.R.S. § 3-141 have the same meaning.
- B. In this Article, unless the context otherwise requires In addition to the definitions provided in A.R.S. §§ 3-101 and 3-141, the following terms apply to this Chapter:
1. "Accuracy" is the closeness of an observed measurement to the true or the presently-accepted value.
 2. "Assistant Director" is the person who is responsible for the administration, operation and control of the State Agricultural Laboratory under the supervision of the Director
 3. "Certificate" means the document issued by the Commission through its Director indicating the services which the applicant is qualified to perform.
 4. "Certified agricultural laboratory" means a laboratory which has received a certificate from the Commission through its Director.
 5. "Certified sample" means a sample obtained by a procedure and method published in professional journals or manuals available in Arizona in the State Agricultural Laboratory. A list of the journals and manuals is filed with the Secretary of State.
 6. "Commission" means the Commission of Agriculture and Horticulture.
 2. "Dairy animal" means any animal whose milk is intended for human consumption.
 7. "Director" means the Director of the Commission of Agriculture and Horticulture.
 8. "Hazardous materials" means any substance that is capable of causing peril or danger to plants, animals or human health except those substances emitting ionizing radiation.
 3. "Non-dairy animal" means any animal whose milk is not intended for human consumption.
 - 9-4. "Person" means an individual, partnership, corporation or other legal entity.
 - 10-5. "Precision" is the agreement of repeated observations made under the same conditions.
 6. "Quality assurance" means an integrated system of management activities involving planning, implementation, assessment, reporting, and quality improvement to ensure that a process, item, or service is of definable quality.

R3-5-102. Certification; application Renewal; Termination

- A. Laboratory certification. Any person who desires to who operates a ~~certified agricultural laboratory performing certified agricultural services pursuant to A.R.S. § 3-145 or to collect certified samples for the State Agricultural Laboratory or any certified agricultural laboratory shall~~ apply to the Commission for a certificate on a form provided by the Assistant Director. The application form shall be signed by both the owner of the laboratory and the person supervising the laboratory.
1. Provide the following information on the Application For Laboratory Certification and submit it with the appropriate fee to the State Agricultural Laboratory:
 - a. The name, business and mailing address, and telephone and fax numbers of the laboratory;

- b. The name, address, telephone number, social security number, and signature of the owner;
 - c. The name, address, telephone number, and signature of each person supervising a certified agricultural service.
2. Provide a comprehensive description of all programs, services and functions;
 3. List each service requested for certification giving details of the method or procedure used, including specific references to the published journal or manual where the method is found.
- B. ~~Applications must be completely filled out and shall be accompanied by the nonrefundable fee set forth in R3-1-104. All documentation submitted for certification must be current. The supervisor of the laboratory must supervisor shall notify the Assistant Director in writing within 30 days of any changes in information provided in the certification form, such as location, laboratory supervisor owner, or other critical information. Failure to comply with any rule in this Title is cause for revocation of certification.~~
- C. If the application for certification is for an area or program a service not currently conducted by the State Agricultural Laboratory and the necessary expertise for review does not exist within the ~~commission~~ State Agricultural Laboratory, the Commission, through its Director, shall establish a committee pursuant to A.R.S. 3-106, of experts from private industry and university personnel whose technical or working expertise are similar to the area of application. The applicant will be provided a list of experts and their credentials. They shall then advise the Commission of the proper procedures for certification in that area.
- D. ~~The Director or the Assistant Director shall submit to the Commission all completed applications for certification or renewal of certification along with all required fees and proof of any current certificate, license or accreditation.~~
- D. Certified sampler.
1. Any person who collects certified samples shall provide the following information on the Sampler Certification Application and score at least 90% on the written sampling test provided with the application:
 - a. The name and social security number of the sampler;
 - b. The name, street and mailing address, and telephone and fax number of the company employing the applicant;
 - c. The name and signature of the company's owner;
 - d. The mailing address and telephone number of the owner, if different than subsection (D)(1)(b);
 - e. The date of the application;
 - f. The name and signature of the applicant's supervisor or manager;
 - g. The current certification number, if 1 is held;
 - h. If the applicant possesses a State Agricultural Laboratory approved embossing seal;
 - i. A list of each service requested for certification.
 2. The state agricultural laboratory shall determine the certified sampling procedure based upon the type of sample for which the applicant requests certification.
 3. The certified sampler shall collect certified samples as prescribed by the agricultural laboratory and affix the embossing seal on the sample collection report.
- E. ~~The Commission shall grant or renew or refuse to grant or to renew a certificate within 30 working days of its receipt of the application and the Assistant Director's recommendation.~~
- E. Certification renewal.

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1. A laboratory or sampler shall file a renewal application at least 30 days before the expiration date of the current certification and provide the following information:
 - a. The name, business and mailing address, and telephone and fax numbers of the laboratory;
 - b. The name, address, telephone number, social security number, and signature of the owner;
 - c. The name, address, telephone number, and signature of each person supervising a certified agricultural service.
 2. An application received less than 30 days before the expiration date shall be considered late and the applicant shall reapply and pay the initial fee, if applicable.
 3. Any application received more than 60 days before the expiration date of the current certification shall be returned to the applicant for resubmittal.
 4. The current certification shall remain valid until a determination is made on the renewal application.
- F. Certification termination.** A laboratory or sampler may terminate its certification, either in part, or in its entirety, by notifying the Assistant Director in writing within 30 days of the effective date of the termination.
- G. Additional services.** A laboratory may add services to its current certification by following the certification procedure outlined in subsections (A) through (C), except that the Assistant Director may waive the on-site survey requirement.
- H. Time-frames.**
1. Overall time-frame. The State Agricultural Laboratory shall issue or deny a certification within the overall time-frames listed in Table 1 after receipt of the complete application. The overall time-frame is the total of the number of days provided for the administrative completeness review and the substantive review.
 2. Administrative completeness review.
 - a. The appropriate administrative completeness review time-frame established in Table 1 begins on the date the State Agricultural Laboratory receives the application. The State Agricultural Laboratory shall notify the applicant in writing within the administrative completeness review time-frame whether the application or request is incomplete. The notice shall specify what information is missing. If the State Agricultural Laboratory does not provide notice to the applicant, the certification application shall be considered complete.
 - b. An applicant with an incomplete certification application shall supply the missing information within the completion request period established in Table 1. The administrative completeness review time-frame is suspended from the date the State Agricultural Laboratory mails the notice of missing information to the applicant until the date the State Agricultural Laboratory receives the information.
 - c. If the applicant fails to submit the missing information before the expiration of the completion request period, the State Agricultural Laboratory shall close the file, unless the applicant requests an extension. An applicant whose file has been closed may obtain a certification by submitting a new application.
 - d. If a laboratory requests certification of a service not currently offered, 90 additional days shall be added to the administrative completeness review to establish a protocol for granting certification.
3. Substantive review. The substantive review time-frame established in Table 1 shall begin after the application is administratively complete.
- a. On-site survey.
 - i. Within 30 days of receipt of the completed application, the State Agricultural Laboratory shall schedule an on-site survey of the applicant's laboratory facilities; or
 - ii. Upon continued compliance with this Article, the Assistant Director may waive the on-site survey required for a renewal applicant.
 - b. If the State Agricultural Laboratory makes a comprehensive written request for additional information, the applicant shall submit the additional information identified by the request within the additional information period provided in Table 1. The substantive completeness review is suspended from the date the State Agricultural Laboratory mails the request until the information is received by the State Agricultural Laboratory. If the applicant fails to provide the information identified in the written request, the State Agricultural Laboratory shall consider the application withdrawn.
 - c. If the application is denied, the State Agricultural Laboratory shall send the applicant written notice explaining the reason for the denial with citations to supporting statutes or rules, the applicant's right to seek a fair hearing, and the time period in which the applicant may appeal the denial.

Table 1. Time-frames

Time-frames (Calendar Days)

Certification	Authority	Administrative Completeness Review	Response to Completion Period	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
Laboratory Certification •New •Renewal •Certification request for service not currently offered	3-145 R3-5-102	14	30	60	90	74
		14	7	30	14	44
		104	30	60	90	74
Sampler Certification	3-145 R3-5-102	14	30	90	90	104

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R3-5-103. Certified services Services

A. A certificate may be obtained In addition to certification for the services established in A.R.S. § 3-141(1), the applicant may apply for certification for any or all of the following agricultural laboratory services including sampling:

1. Determination of specific element and ion content of water for irrigation or livestock purposes;
2. Determination of specific element and ion content of plant tissue for the evaluation of plant nutrients;
3. Determination of specific element and ion content of soil for the evaluation of ~~plant nutrient content~~ soil fertility and for element and ion content ~~which might that~~ may cause plant growth limitations;
4. Determination of contents of processed meats and meat food products including the percentage of meat and non-meat ingredients;
5. Verifying ~~for by an~~ analysis the accuracy of the label ~~guaranteed-certified samples for guarantees of~~ feeds, fertilizers, animal manures, plant growth stimulants, soil amendments, soil conditioners or pesticides;
6. Verification of planting seed germination, percentages, purity analysis or other named seed or plant propagative material testing procedures;
7. Identification of insects, plant pathogens, animal pathogens, nematodes or animal parasites;
8. Testing of milk products for quality and market standards;
9. Determination of mycotoxins, antibiotics or drug residues in plant or animal tissue;
10. Determination of mycotoxins, antibiotics or drug residues in plant or animal products, animal feed or feed ingredients;
11. Determination of specific pesticide or hazardous or toxic elements in plant or animal tissue;
12. Determination of specific pesticide or hazardous or toxic elements in air, water used in livestock production, irrigation water, soil, agricultural product or animal feed;
13. Sample collection.

B. An applicant may submit a written request to the State Agricultural Laboratory for an certified agricultural service not established in subsection (A) or A.R.S. § 3-141(1).

R3-5-104. Fees

The application fee for initial certification is \$200. The application fee for renewal of a certificate is \$100. The applicant shall provide the following fees before the certification is granted:

1. Initial fee, \$200 per certified service, or
2. Renewal fee, \$100 per certified service, and
3. Time and mileage as prescribed in 38 A.R.S. 4, Articles 1 and 2.

R3-5-105. Precision and accuracy control program

Each applicant shall submit documentation that it has a precision and accuracy control program for each certified service it provides.

R3-5-105. Laboratory Requirements

A. A laboratory shall maintain and update a master file for all certified agricultural laboratory services. The master file shall contain:

1. A letter of certification stating the period of validity;
2. A quality assurance manual approved by the Assistant Director;
3. Documentation of competence and experience in testing for the service requested that establishes the laboratory personnel's capabilities and working knowledge of the

applicable test standards and methods for approval of the service and the testing analyses for each service;

4. A written standard operating procedure when required and approved by the Assistant Director;
5. Reports of all sample results for the last 3 years and all data generated during the testing.
6. Equipment lists, including:
 - a. The type and manufacturer;
 - b. The serial and model number;
 - c. The date of the last calibration, if applicable.
7. Receiving and shipping records;
8. Quality control documentation;
9. Calibration certificates; and
10. All correspondence relating to the certification and operation of the program.

B. The testing laboratory shall maintain and update a quality assurance manual that describes actions to be taken by the laboratory to ensure that routinely generated analytical data are scientifically valid and defensible and are of known and acceptable precision and accuracy. The manual shall contain:

1. A description of the control, structure and responsibilities of key personnel that includes:
 - a. The legal name and address of the main office or parent company;
 - b. The name and location of the laboratory, if different from subsection (B)(1)(a);
 - c. An outline or chart showing the titles or positions of all key personnel and their reporting relationships relative to the certification request, including relationship between the administration, operation, and quality control;
 - d. The names and resumes of the individuals assigned to each of the positions identified in subsection (B)(1)(c), or the personnel requirements for the individuals occupying those positions;
 - e. Verification of an adequate number of personnel who have a working knowledge of the applicable test standards and test methods, and are qualified by training and experience to conduct tests and analyze data to assure the accuracy, performance, and timeliness of testing and follow-up inspections.
2. A description of receiving, handling and shipping controls that includes:
 - a. The visual examination of samples, upon receipt, for evidence of shipping damage;
 - b. The storage of items, while awaiting disposition, regarding the safety of personnel and the degree of protection to preclude the possibility of damage; and
 - c. The shipping and receiving data containing the date of receipt, the name of the manufacturer, and any other data necessary to accurately record and identify samples at the laboratory.
3. A description of testing information that includes a written list of test procedures as prescribed in R3-5-106. A test procedure shall, when applicable, contain:
 - a. The nomenclature and identification of the test product;
 - b. Detailed steps and operations in sequence, including verifications made before proceeding;
 - c. Values for acceptance or rejection of analytical results based on permissible analytical variations;
 - d. A list of measuring equipment, specifying range, type, accuracy, and the name of the test;

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- e. An identification of any hazardous situations or operations;
 - f. A list of the precautions taken to ensure safety of personnel, and to prevent damage to test items and measuring equipment;
 - g. Environments and other conditions, including tolerances;
 - h. Special instructions for inspection or testing, such as special handling of fragile test items;
 - i. The nomenclature and designation of an applicable reference standard on which the test procedure is based;
 - j. Any documentation requiring consistent implementation of acceptable quality control measures for precision and accuracy using appropriate spikes, blanks, multiple sample analysis, or standard reference material controls to assure validity of test results.
4. Reference standards documenting that:
- a. The accuracy of all measurement chemical standards are traceable to primary standards;
 - b. The biological specimens are verified by the Assistant Director or the Assistant Director's designee.
5. A description of an equipment maintenance program that includes:
- a. Manufacturer's recommendations for the set-up and normal operation of each instrument and, if appropriate, the specific instructions for periodic checking of the reproducibility of the system;
 - b. Quality control procedures for determining instrument performance;
 - c. Monitoring of temperature controlled spaces;
 - d. Certification that thermometers and analytical balances meet federal standards when applicable;
 - e. Calibration of glassware and volumetric equipment.
- C. The testing laboratory is responsible for the accurate calibration of equipment.
- D. The testing laboratory shall maintain records for 5 years, except pesticide residue sample results and data which shall be 7 years;
- E. The construction and operation of the laboratory shall comply with the standards established by OSHA and any other applicable federal, state, county and municipal building, sanitary, safety, electrical and fire codes for the area in which the laboratory is located. The laboratory shall comply with the disposal of hazardous waste materials established in Identification and Listing of Hazardous Waste, 40 CFR 261, amended August 12, 1997, and Standards Applicable to Generators of Hazardous Waste 40 CFR 262, amended August 12, 1997. This material is incorporated by reference, on file with the Office of the Secretary of State, and does not include any later amendments or editions of the incorporated matter.

R3-5-106. Methodology Methods of Analyzing and Testing

A laboratory must shall, when complying with certification standards, supply the Assistant Director with the details of each this Article, use the methods and procedures for analyzing and testing used or referenced procedure and methods published in professional journals or manuals available in Arizona in the State Agricultural Laboratory. A list of the journals and manuals is filed with

the Secretary of State and obtain the approval of the Assistant Director, or use the methods and procedures established by the State Agricultural Laboratory.

R3-5-107. Check sample testing program Sample Testing Program

- A. A laboratory applying for certification must shall participate in a check sample program approved by the Assistant Director to demonstrate to the Assistant Director or his designee the its ability to perform with accuracy and precision each of provide those services for which certification is requested. Accuracy and precision shall be within defined limits as prescribed in the analytical method for that service or those established from past data supplied by available inter-laboratory and intra-laboratory analysis.
- B. Individual laboratory evaluation will shall be on the basis of based on the results obtained for each check sample in relationship to results, grouped by methods, received from all laboratories participating in that check sample program. If a deficiency is noted during an on-site evaluation or in the examination of split-samples, the applying laboratory shall submit a plan of corrective action designated to eliminate the deficiency. The applying laboratory shall supply provide the Assistant Director with its identification number and a copy of the results for all analysis submitted to the check sample program.
- C. The applying laboratory shall bear the costs of all analyses performed and the cost of all subsequent check samples, including the cost of any check sample service used to determine proficiency.

R3-5-108. Physical, sanitary and safety requirements

All certified laboratories shall be in compliance with the applicable federal, state, county and municipal building, sanitary, safety, electrical and fire codes for the area in which the laboratory is located.

R3-5-109. Granting of certification

The Assistant Director shall review all certification application forms for the adequacy of precision and accuracy control programs. If the Assistant Director finds that the applicant satisfied precision and accuracy requirements, he shall grant certification subject to approval by the Commission. If the Assistant Director determines that a certification application is not complete or that the precision and accuracy control programs of the laboratory applying for the certification are inadequate, the Director shall establish a committee of experts in the area of question who will advise him. The findings of both the Assistant Director and the advisory committee, through the Director, will then be referred to the Commission for its determination in the granting or denying of the certification of the laboratory making such the application. If the Commission refuses certification, the applicant may request a hearing before the Commission pursuant to A.R.S. § 3-148.

R3-5-110. Referee laboratory Laboratory

If two 2 certified laboratories have differing results or if the results of a certified laboratory are challenged by the contracting agency or other state agency, the Director may designate a laboratory to serve as a referee to assist in making a determination. All costs incurred by said the referee laboratory shall be borne by the party losing the dispute.

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TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 45. BOARD OF RESPIRATORY CARE EXAMINERS

PREAMBLE

1. **Sections Affected**

R4-45-101 R4-45-102 R4-45-201 R4-45-214	<u>Rulemaking Action</u> Amend Amend Amend Amend
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2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statute the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 32-3504(A)(2) and 41-1072, et seq.

Implementing statutes: Laws 1990, Chapter 256, § 1; A.R.S. §§ 32-3202, 32-3501(10), 32-3504(A)(4) and (A)(6), 32-3521(C), 41-1008(C), and 41-1073
3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Mary Hauf Martin, Executive Director
Address:	Board of Respiratory Care Examiners 1400 West Washington, Suite 200 Phoenix, Arizona 85007
Telephone:	(602) 542-5995
Facsimile:	(602) 542-5900
4. **An explanation of the rule, including the agency's reasons for initiating the rule:**

The Board is mandated by statute to adopt rules which will provide licensees, applicants, and the general public the requirements for licensure of respiratory care practitioners (RCPs) in Arizona. A new provision was added to the Board's statutory requirements in 1998 for the submission of a full set of fingerprints by each new license applicant beginning January 1, 1999, for a state and federal criminal background check. The Board's Rules need to be amended to reflect this requirement and the associated fee. Also, an informal rules committee (made up of licensees from all different health care work locations) reviewed the Board's existing rules and found several vague areas which need further definition. A definition is needed to clarify the intent of the legislature that individuals who practice respiratory care are health care professionals because the general statute, A.R.S. § 32-3202, was implemented prior to the creation of the Board yet applies to the Board according to the Board's Assistant Attorney General. In the same Section, there is a clarification to an existing vagary in statutory language regarding the delivery of medical equipment. The statute allows for any medical equipment dealer to deliver respiratory equipment as long as a licensed RCP verifies that the prescription ordered by the physician and the equipment being delivered are consistent and meet the needs of the patient, but the statute doesn't specify when this verification must take place. The proposed rule clarifies that the verification of the prescription must take place prior to the time the equipment is delivered.

The Board also wishes to amend an existing rule, which clarifies a statutory provision establishing standards of professional conduct, to include several additional acts which the Board had felt fell within the general definition of unprofessional conduct. That is, "Any conduct or practice which is contrary to recognized standards of ethics of the respiratory therapy profession or any conduct or practice which does or might constitute a danger to the health, welfare or safety of the patient or the public," but that during disciplinary cases the Assistant Attorney General stated were not specifically covered and which the Board believes should constitute unprofessional conduct by licensees. These acts include: theft of the property from a healthcare work location or a patient; failure to report for assigned duty at a healthcare work location; threatening the physical health or safety of members of the Board or Board staff; and non-adherence to the scope of practice for RCPs established at, and by, healthcare work locations.

Finally, the proposed rules seek to achieve the Board's compliance with a statute which mandates all State agencies to implement licensing time-frames through a rulemaking process.
5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state.**

Not applicable.
6. **The preliminary summary of the economic, small business, and consumer impact:**

The proposed rules have no financial impact. The proposed rules provide further clarification of the existing framework for licensure of respiratory care practitioners (RCPs) in Arizona, and implement 2 legislative mandates: a new licensing requirement and licensing time-frames. Consumers are served by the Board whose purpose is to protect the public health.

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7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Mary Hauf Martin, Executive Director
Address: Board of Respiratory Care Examiners
1400 West Washington, Suite 200
Phoenix, Arizona 85007
Telephone: (602) 542-5995
Fax: (602) 542-5900

8. The time, place and nature of the proceedings for the adoption, amendment or repeal of the rule, or if no proceeding is scheduled, where, when and how persons may request an oral proceeding on the proposed rule:

Date: December 17, 1998
Time: 9 a.m.
Location: State Offices Building
1400 West Washington, 2nd Floor Conference Room
Phoenix, Arizona 85007
Nature: This is a regularly scheduled, monthly, public Board meeting

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rule:

Not applicable

10. Incorporations by reference and their location in the rules:

Not applicable

11. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 45. BOARD OF RESPIRATORY CARE EXAMINERS

ARTICLE 1. GENERAL PROVISIONS

Section

R4-45-101. Definitions
R4-45-102. Fees

ARTICLE 2. LICENSURE

R4-45-201. Application
R4-45-214 Standards of Professional Conduct

ARTICLE 1. GENERAL PROVISIONS

R4-45-101. Definitions

In addition to the definitions set forth at A.R.S. § 32-3501, in this Chapter, unless the context otherwise requires:

1. "ACLS" means Advanced Cardiac Life Support Protocols.
2. "Applicant" means an individual who meets the qualifications set forth at A.R.S. § 32-3523 and applies for licensure pursuant to A.R.S. § 32-3522.
3. "Approved continuing education" means a planned course or program designed to enhance learning and promote the continued development of knowledge, skills, and attitudes consistent with contemporary standards for the individual's respiratory care practice, and is approved by the Board, American Association for Respiratory Care, or the Arizona Society for Respiratory Care.
4. "BLS" means Basic Life Support Protocols.
5. "CPR" means cardiopulmonary resuscitation.
6. "Contested case" has the same meaning as provided in A.R.S. § 41-1001.

7. "Continuing education unit" or "CEU" means an approved continuing education course or program that lasts 60 minutes.
8. "Day" means calendar day.
9. "Direct supervision" means that a licensed respiratory care practitioner or physician licensed pursuant to A.R.S. Title 32, Chapters 13 or 17, is physically present at a work site and readily available to provide respiratory care to a patient or observe and direct the practice by the holder of a temporary license.
10. "Executive Director" means the executive officer employed by the Board of to perform administrative and investigative functions as ordered by the Board.
11. "Individual" as used in A.R.S. § 32-3521(B)(4) means a health care professional as defined at A.R.S. § 32-3202(2).
- 11-12. "License" means the document issued by the Board to practice respiratory care in Arizona.
- 12-13. "Licensee" means an individual who holds a current license issued pursuant to A.R.S. § 32-3501 et seq.
- 13-14. "National Board for Respiratory Care, Inc. or NBRC" means the national credentialing board for respiratory therapy.
- 14-15. "Party" has the same meaning as provided in A.R.S. § 41-1001.
- 15-16. "Pharmacological, diagnostic and therapeutic agents" as used in A.R.S. § 32-3501(5) means, but is not limited to, medications that are aerosolized, given through artificial airways, or given through vascular access.
17. "Temporary license" means the document issued by the Board pursuant to A.R.S. § 32-3521 that allows an applicant to practice respiratory care under direct supervision before the Board issues the applicant a license.

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17. 18. "Verification of license" means the form the Board provides to an applicant to submit for completion to states in which the applicant currently holds or previously held a license.

19. "Verification by a licensed respiratory therapist or respiratory therapy technician" as used in A.R.S. § 32-3521(C) and A.R.S. § 32-3521(B)(7) means that a licensee as defined in this Section must confirm that the prescription ordered by a physician and the equipment sold or leased by a medical equipment dealer are consistent prior to the time the equipment is delivered and that the equipment is consistent with the prescription and needs of the patient.

R4-45-102. Fees

- A. The Board shall charge the following fees:
1. \$100 for an application for a license.
 2. \$150 for an application based on a foreign diploma from a foreign respiratory therapy school.
 3. \$85 for an initial license.
 4. \$85 for a biennial renewal of a license.
 5. \$25 for recovery of the cost of the following service: renewing a temporary license.
 6. \$10 for recovery of the cost of the following service: verifying an Arizona license to another state.
 7. \$10 for a duplicate license or duplicate wallet license card.
 8. \$25 to purchase the Board's Respiratory Care Practitioner's List compiled pursuant to A.R.S. § 32-3504(A)(7).
 9. \$25 fee for recovery of the cost associated with an insufficient funds check submitted to the Board as payment of any fee.
 10. \$36 fingerprint fee in the form of a certified check or money order.
- B. With the exception of the fingerprint fee specified in Section (A)(10) above, all fees shall be remitted to the Board by personal check, cashier's check, or money order, payable to the Board of Respiratory Care Examiners. All fees remitted to the Board are non-refundable.

ARTICLE 2. LICENSURE

R4-45-201. Application

- A. An applicant shall submit an application for a license to practice as a respiratory care practitioner to the Board office on a form prescribed by the Board.
- B. An application, which shall include an address of record, shall be typed or written in black ink, and signed, under oath, by the applicant. The application shall be accompanied by the following:
1. An application fee in the amount prescribed at R4-45-102(A)(1);
 2. All documentation needed to verify information provided on the application;
 3. A statement of the facts entitling the applicant to take an examination or to receive a license without examination; and
 4. A full set of fingerprints submitted on a card provided by the Board for a state and federal criminal background check along with a certified check or money order in the amount prescribed at R4-45-102(A)(10) as authorized at A.R.S. § 41-1008(C).
- C. An applicant shall inform the Board in writing of any change in the applicant's address of record within 10 days from the date of change.
- D. The Board shall notify the applicant in writing of any decision concerning the application.

- E. If the Board denies an application, the applicant may make a written request for a hearing to review the denial. The applicant shall file the request with the Board within 15 days following service of notice of the denial. The request shall state specifically the reasons why the Board should review its decision. The Board shall schedule the hearing at its next meeting or at the first meeting that is convenient for all parties. The Board shall conduct the hearing in accordance with A.R.S. § 41-1061 et seq.
- F. If an applicant whose application is denied does not request a hearing to review the denial or if the denial is affirmed, the Board shall administratively close the applicant's file. An individual who wishes to be considered for licensure after the individual's file has been administratively closed shall reapply.
- G. An applicant shall be a high school graduate or have obtained a General Equivalency Diploma (GED).
- H. Procedures for processing license applications
1. Within 14 days of receiving a license application package, the Board shall notify the applicant that the package is either complete or incomplete. If the package is incomplete, the notice shall specify what information is missing.
 2. An applicant with an incomplete package shall supply the missing information within 60 days from the date of the notice. If the applicant fails to do so, the Board may close the file. An applicant whose file has been closed and who later wishes to become licensed, shall apply anew.
 3. Upon receipt of all missing information within 60 days, as specified in subsection (2), the Board shall notify the applicant that the package is complete.
 4. The Board shall not process an application for licensing until the Board receives the results of the state and federal criminal background check required at A.R.S. § 41-1008(C), and until the applicant has fully complied with the requirements of R4-45-201, the applicable provisions of R4-45-202 through R4-45-206, and the fee prescribed in R4-45-102(A)(3).
 5. The Board shall render a licensing decision no later than 90 days after receipt of a complete application package. The date of receipt is in the postmark date of the notice advising the applicant that the package is complete.
 6. For the purpose of A.R.S. § 41-1073, the Board establishes the following licensing time-frames for licenses:
 - a. Administrative completeness review time frame: 15 days;
 - b. Substantive review time frame: 90 days;
 - c. Overall time frame: 105 days.
 - d. When the Board denies a license, the Board shall send the applicant written notice explaining:
 - i. The reason for denial, with citations to supporting statutes or rules;
 - ii. The applicant's right to seek a fair hearing to challenge the denial; and
 - iii. The time periods for appealing the denial.
- I. Procedures for issuing license renewal applications
1. Within 14 days of receiving a license renewal application, the Board, through its Executive Director, shall determine whether the package is complete or incomplete. If the package is incomplete, a notice shall be sent specifying what information is missing.
 2. The Board shall not process an application for license renewal until the applicant has fully complied with R4-45-207.

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- a. For license renewal applicants who submit application packages prior to the expiration date of their existing licenses:
 - i. If an application is complete, the Board through its Executive Director, shall renew the license.
 - ii. If an applicant with an incomplete package supplies the missing information prior to the date of expiration of the existing license, the Board through its Executive Director shall renew the license.
 - b. For an applicant with an incomplete package who supplies the missing information within 7 days after the date of expiration of a license, or for an applicant who submits an application package within 7 days after the date that the previously held license expired, the Board, through its Executive Director, shall review the applicant's compliance with A.R.S. § 32-3556. The Board shall notify the applicant of the Board requirement for a signed statement that the applicant has or has not violated A.R.S. § 32-3556. Upon receipt of the signed statement:
 - i. For an applicant who has not knowingly violated A.R.S. § 32-3556, the Board, through its Executive Director, shall renew the license and issue a letter of concern. Both the renewed license and the letter of concern will require ratification by the Board.
 - ii. For an applicant who has violated A.R.S. § 32-3556, the Board shall render a licensing decision no later than 60 days after the receipt of a complete package. The date of receipt is in the postmark date of the notice advising the applicant that the package is complete.
 - c. For an applicant with an incomplete package who supplies the missing information more than 7 days after the date of expiration of a license, or for an applicant who submits an application package more than 7 days but less than 2 years after the date that the previously held license expired, the Board, through its Executive Director, shall review the applicant's compliance with A.R.S. § 32-3556. The Board shall notify the applicant of the Board requirement for a signed statement that the applicant has or has not violated A.R.S. § 32-3556. Upon receipt of the signed statement, the Board shall render a licensing decision no later than 60 days after the receipt of a complete package. The date of receipt is in the postmark date of the notice advising the applicant that the package is complete.
 - d. For an applicant who submits an application package more than 2 years after the date that the previously held license expired, the applicant shall apply as a new license applicant.
3. For the purposes of A.R.S. § 41-1073, the Board establishes the following licensing time-frames for renewal of licenses:
 - a. Administrative completeness review time-frame: 7 days;
 - b. Substantive review time-frame: 60 days;
 - c. Overall time-frame: 67 days.

4. When the Board denies a license renewal, the Board shall send the applicant written notice explaining:
 - a. The reason for denial, with citations to supporting statutes or rules;
 - b. The applicant's right to seek a fair hearing to challenge the denial; and
 - c. The time periods for appealing the denial.

R4-45-214. Standards of Professional Conduct

Conduct or practice that is contrary to recognized standards of ethics of the respiratory therapy profession, as used in A.R.S. § 32-3501(10)(i), includes but is not limited to the following:

1. Engaging in the practice of respiratory care in a manner that harms or may harm a patient or that the Board determines falls below the community standard.
2. Procuring or attempting by fraud or misrepresentation to procure a license or renewal of a license to practice respiratory care.
3. Violating a formal order, condition of probation, or stipulation issued by the Board.
4. Obtaining a fee by fraud, deceit, or misrepresentation.
5. Falsely claiming attendance at a continuing education course or program to meet license renewal requirements.
6. Endangering a patient's or the public's physical or emotional health or safety or engaging in conduct or practice that may reasonably be expected to do so.
7. Engaging in sexual intimacies with a patient.
8. Committing an act of sexual abuse, misconduct, harassment, or exploitation.
9. Acting in a manner that the Board determines, based on community standards, constitutes incompetence, gross negligence, repeated negligence, or negligence that results in harm or death of a patient.
10. Abandoning or neglecting a patient, failing to report for or leaving a respiratory therapy assignment before properly advising appropriate personnel.
11. Using or being under the influence of alcohol, illegal drugs or substances, or drugs or substances that impair judgment, while on duty in any health care work location.
12. Impersonating another licensed practitioner.
13. Knowingly employing, directing, or supervising an individual in the performance of respiratory care who is not authorized to practice respiratory care.
14. Violating the confidentiality of information concerning a patient.
15. Inaccurately recording, falsifying, or altering a patient record, including but not limited to, patient charts or medication administration records.
16. Misrepresenting or omitting facts on an application for employment as a respiratory care practitioner.
17. Retaliating against any person who reports in good faith to the Board alleged incompetence, illegal, or unethical conduct of any practitioner.
18. Unauthorized use, removal or possession of any property by a licensee when the property belongs to an individual or entity other than the licensee.
19. Threatening the physical health or safety of Board or Board staff members.
20. Knowingly exceeding the scope of practice for an RCP at any healthcare location as the scope of practice is defined by that healthcare work location.

NOTICE OF PROPOSED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 2. MEDICAL RADIOLOGIC TECHNOLOGY BOARD OF EXAMINERS

PREAMBLE

1. Sections Affected

R12-2-101
R12-2-102
R12-2-103
R12-2-104
Article 2
R12-2-201
Attachment I
R12-2-202
R12-2-203
R12-2-204
R12-2-205
R12-2-206
R12-2-207
Article 4
R12-2-401
R12-2-402
R12-2-403
R12-2-404
R12-2-405
R12-2-406
R12-2-406

Rulemaking Action

Amend
Amend
Amend
New Section
Amend
Amend
Repeal
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Repeal
New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute (general): A.R.S. §§ 32-2803(A) and 41-1072 through 41-1078

Implementing statute (specific): A.R.S. §§ 32-2803(B) and (C), 32-2804, 32-2812, 32-2813, 32-2814, and 32-2816

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 3 A.A.R. 2520, September 12, 1997

4. The name and address of agency personnel with whom persons may communicate regarding the rules:

Name: John Gray

Address: Arizona Radiation Regulatory Agency
4814 South 40th Street
Phoenix, Arizona 85040

Telephone: (602) 255-4845, Ext. 241

Fax: (602) 437-0705

5. An explanation of the rule, including the agency's reasons for initiating the rule:

Introductory Statement: The rules containing the proposed changes were written a number of years ago and have not undergone a thorough revision based on the 5-year-review submitted for the February 6, 1996, council meeting. Most of the corrections are made to improve format, clarity, and consistency.

R12-2-101: The rule contains definitions needed for an understanding of the Medical Radiologic Technology Board of Examiners (MRTBE) rules. The word "regulations" needs to be changed to "rules" throughout Chapter 2. The definitions for "direction" and "ionizing radiation" are deleted because they are inconsistent with A.R.S. §32-2801(5) and (6). Changes are made to other definitions to improve clarity. The definitions for "chest radiography", "extremity", "foot", "practical radiologic technologist", and "practical radiologic technologist in podiatry" are added to better delineate the different medical radiography activities each group is authorized to perform.

R12-2-102: The rule lists the certificate granting boards recognized by the Board. The 2 national technologist certifying bodies have merged. Because the certifying bodies can change without notice, the wording is changed to allow the Board to maintain a current list of certifying organizations.

R12-2-103: The rule informs individuals concerned with certification of radiologic technologists that the Medical Radiologic Technology Board of Examiners is the agency to contact. The word "regulation" is replaced with "rule".

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R12-2-104: A rule is added, defining the method for approving schools of radiologic technology; and a statement is made that the Board will maintain a list of approved schools. This rule replaces similar requirements deleted from Article 3.

R12-2-201: The rule is amended to list the information that is requested by the Board for technologist certification; the application form that requested the above referenced information is deleted from Article 2. A reference to a statute is corrected.

R12-2-202: The rule specifies the qualifications of a technologist applicant. A number of changes are made for clarification purposes.

R12-2-203: Recourse is described for applicants failing their certification examination. Improvement is made in the format and clarity of this rule.

R12-2-204: The rule lists prohibitions and limitations placed on practical technologists because of their limited training. No changes are needed.

R12-2-205: The rule provides the procedure to follow if a certificate expires. Corrections are made for clarity and consistency. Reference is made to the renewal fee in R12-2-206.

R12-2-206: The registration fees are listed in this rule. With the amendment only the renewal fee will be listed. The application fee is deleted because it is listed in statute. There is no fee increase.

R12-2-207: Requirements are listed for certificate holders wishing to change their name or address, or secure a duplicate certificate. A number of changes are made to improve readability and clarity.

Article 4 (Title): Clarification of the effected technologist group is made.

R12-2-401: The course time-frame for practical radiologic technology schools is specified. A very minor correction is made to the rule heading.

R12-2-402: Requirements for practical radiologic technologist clinical training facilities are provided. A minor correction is made to the rule heading and a change is made to make the rule more explicit.

R12-2-403: Facility requirements for practical radiologic technology schools are listed. Minor changes are made to improve understandability.

R12-2-404: Listed are requirements that must be met by persons responsible for training students in practical radiologic technology. Changes are made to improve understandability.

R12-2-405: Listed are the didactic requirements for a practical radiologic technologist school. Many changes are made to improve readability.

R12-2-406: The rule listing approved schools of practical radiologic technology is repealed. The approval process for schools of practical radiologic technology is added as a new rule.

6. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

7. The preliminary summary of the economic, small business, and consumer impact:

Changes and additions are made to improve clarity, consistency and understanding of the rules. With the exception of the addition of application review time-frames, mandated by new legislation, the majority of changes are made as a result of the last 5-year-review report, which is an on-going process to keep the rules current. The changes not described above are a result of additional review that occurred during this rulemaking process. The economic impact to all affected parties should be none to minimal.

8. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: John Gray, MRTBE Executive Director
Address: Arizona Radiation Regulatory Agency
4814 South 40th Street
Phoenix, Arizona 85040
Telephone: (602) 255-4845 ext. 241
Fax: (602) 437-0705

9. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

An oral proceeding is scheduled for November 20, 1998 at 1:00 P.M. at the address listed below. A person may submit written comments concerning the proposed rules by submitting them no later than 5 P.M., November 20, 1998, to the following person:

Name: John Gray, MRTBE Program Manager
Location: Arizona Radiation Regulatory Agency

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Address: 4814 South 40th Street
Phoenix, Arizona 85040
Telephone: (602) 255-4845 ext. 241
Fax: (602) 437-0705

10. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable
11. Incorporations by reference and their location in the rules:
None
12. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 2. MEDICAL RADIOLOGIC TECHNOLOGY BOARD OF EXAMINERS

Section

- R12-2-101. Definitions
R12-2-102. Certificate ~~Granting Bodies~~ granting bodies
R12-2-103. Communications
R12-2-104. Approval of Radiologic Technology Schools

**ARTICLE 2. APPLICATION and CERTIFICATION OF
TECHNOLOGISTS**

- R12-2-201. Applications for certification and permits
Attachment 1 Application Form
R12-2-202. Qualifications for certificates and permits
R12-2-203. Examination Failures
Certification examination: third failures.
R12-2-204. Prohibitions and Limitations
limitations, exceptions
R12-2-205. Certificate Expiration expiration.
R12-2-206. Fees Schedule of fees.
R12-2-207. Change of Name or Address; Duplicate Certificate
Change of name and/or address; duplicate certificate

**ARTICLE 4. SCHOOLS OF PRACTICAL RADIOLOGIC
TECHNOLOGY Technologist in Radiology**

- R12-2-401. Course Time-frames time frames
R12-2-402. Clinical Training training
R12-2-403. Equipment and Facilities facility requirements
R12-2-404. Program Administration Faculty
R12-2-405. Didactic Training course description
R12-2-406. Approved schools
R12-2-406. School Approval

ARTICLE 1. GENERAL PROVISIONS

R12-2-101. Definitions

The definitions in A.R.S. § 32-2801 apply to this Article. In addition, the terms in this Chapter have the following meanings. In these Regulations unless the context otherwise requires:

1. "Assistance" means any activity except the following: Positioning of the patient and x-ray tube, selecting technical settings setting techniques, and exposing a patient to x-rays actual exposure.
2. "Certification" means the process by which the Board grants permission and recognition to an individual to engage in radiologic technology upon finding the individual has met the certain predetermined qualifications specified by statute and rule by the Board.
"Chest radiography" means radiography performed to visualize the heart and lungs only.
3. "Contrast media" means material intentionally administered to the human body to define a part or parts that are

part(s) which is not normally radiographically visible visualized radiologically.

4. "Diagnostic application" means the use of ionizing radiation for diagnostic purposes, including to include, but not limited to, measuring and positioning patients, selecting and setting up technical settings exposure factors on x-ray equipment, and making x-ray exposures.
5. "Direction" means supervision of a certified technologist by a licensed practitioner requiring that such licensed practitioner, acting within the limits specified in the laws under which the practitioner is licensed, shall determine that an x-ray exposure of a patient should be made. The licensed practitioner shall designate the part or parts of the patient's body which should be exposed, before a certified technologist may apply x-rays to a human being. Such supervision shall also require that only a licensed practitioner shall receive exposed and processed x-ray film for the purpose of diagnostic interpretation.
6. "Ionizing radiation" for the purpose of these Regulations means x-radiation.
"Extremity" means the lower 2/3 of the humerus distally to the phalanges and the lower 1/3 of the femur distally to the phalanges.
"Foot" means the distal part of the human leg upon which the individual stands and walks.
"Practical radiologic technologist" for purposes of this Chapter is equivalent to "practical technologist in radiology" however, this title is further defined as a person authorized to use radiography, not including fluoroscopy and the use of contrast media, and limited to the chest and extremities, on humans at the direction of a licensed practitioner; unless
 - A. the person is certified as a practical radiologic technologist in podiatry, in which case the person is limited to radiography of the foot and leg, or
 - B. The person is certified as an "unlimited" practical radiologic technologist, in which case the person is not limited to those radiographic activities listed above."Practical radiologic technologist in podiatry" for purposes of this Chapter is equivalent to "practical technologist in podiatry.
"Practical radiologic technology" for purposes of this Chapter is equivalent to "practical technology in radiology".
7. "Radiograph" means the record of images on a film which represents anatomical details of the part radiographically examined and which is formed by the differential absorption of ionizing radiation within with the part.

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8. "Radiography" means the use of ionizing radiation in making radiographs for diagnostic interpretation excluding fluoroscopy.
9. "Special permit" means a certificate issued by the Board exempting an individual from the specific provisions of A.R.S. §§ 2802 through 2813 32-2801 et seq.
10. "Specific direction" means the application of x-radiation to a specific area of the human body for diagnostic purposes while under the specific supervision of a licensed practitioner.
11. "Temporary certificate" means a certificate issued by the Board to any person who has completed a training program approved by the Board and whose certification is pending.
12. "Therapeutic application" means the use of ionizing radiation including, but not limited to, setting up the treatment position, delivering the required daily dose prescribed by the physician, certifying the record of the technical details of the treatment, selecting the required filter and treatment distance, making beam directional shells and molds, using diagnostic x-ray equipment for tumor localization, assisting the physicist in calibration procedure, and assisting in treatment planning procedures. Therapeutic application does not include taking x-rays for diagnostic purposes.
13. "Therapeutic purpose" means the use of x-radiation to treat human disease on human beings for the treatment of diseases.
14. "X-radiation" means penetrating electromagnetic radiation with whose wave-lengths are shorter than those of visible light that is and are usually produced by bombarding a metallic target with fast electrons in a high vacuum, creating photons that originate from originating in the extranuclear part of the atom.

R12-2-102. Certificate Granting Bodies ~~granting bodies~~

For the purpose of A.R.S. §32-2812(C), the Board shall maintain a list of 32-2812A.3.(c), the Board recognizes the American Registry of Radiologic Technologists (ARRT) or the American Registry of Clinical Radiologic Technologists (ARCRT) as certificate granting bodies in the field of Radiologic Technology.

R12-2-103. Communications

Any person interested in providing or receiving information All communications and reports concerning these rules or Regulations and other matters should contact be made with the Medical Radiologic Technology Board of Examiners

R12-2-104. Approval Radiologic Technology Schools

- A. An applicant seeking approval for a proposed radiologic technology school shall apply by letter and shall address all of the concerns listed for school approval in A.R.S. § 32-2804.
- B. The Board shall review and approve a school application according to the schedule in A.A.C. R12-2-301.
- C. The Board shall maintain a list of radiologic technology schools approved according to A.R.S. § 32-2804.

**ARTICLE 2. APPLICATION AND CERTIFICATION OF
TECHNOLOGISTS**

R12-2-201. Applications for certification and permits

With respect to the application procedure outlined in A.R.S. § 32-2812(A) and (B) A.R.S. § 32-2812.A and B:

- A.1. The Board accepts a passing score on hereby establishes that the high school equivalency test (G.E.D.) as evidence of suc-

cessful completion of high school or its equivalent, satisfies the requirement of A.R.S. §32-2812.A.3.d.

- B.2. On a notarized Board application form for certification, or as an attachment to a completed and notarized Board application, an applicant shall provide the following information:

1. Copy of current American Registry of Radiologic Technologists (ARRT) wallet card;
2. Copy of any degree, diploma, or certificate from an approved radiologic or practical radiologic technology school;
3. Photo;
4. Certification fee;
5. Name address, and telephone number;
6. Birth date, sex, and social security number;
7. Purpose of application and current licensure or certificate number, if applicable;
8. Employment information for the last 3 years;
9. Education information;
10. Criminal, moral, license/certification history; and
11. Signature and date of signature of the applicant

The application for certification and permits shall be in the form prescribed in Attachment I.

R12-2-202. Qualifications for certificates and permits

- A. The Board shall issue a radiologic technologist certificate if the applicant meets the requirements the qualifications for a radiologic technologist certificate prescribed in A.R.S. §32-2812 or a temporary radiologic technologist certificate prescribed in A.R.S. §32-2814. Radiologic Technologist certificate: The qualification requisites to the issuance of a Radiologic Technologist certificate or a Temporary certificate are prescribed in A.R.S. §§ 32-2812 and 32-2814, respectively.
- B. The Board shall issue a practical technologist in radiology certificate if the applicant has Practical Technologist in Radiology certificate. Must have passed an examination approved by the Board and has have completed a Board approved program of limited practical technology in radiology, provided there are schools accredited by this Board. An The applicant shall be notified of the time and place of the next examination.
- C. An applicant or an inactive certificate holder who has not practiced in radiologic technology during in the prior 3 years shall pass an examination approved by the Board before certification. three years preceding the date of his/her application will be required to pass an examination approved by the Board prior to certification.

R12-2-203. Examination Failures Certification ~~examination third failures~~

Upon failing the certification exam a 3rd time, a radiologic or a practical radiologic technologist applicant shall repeat the entire course of training prescribed for the specified certificate. A third failure of the certification examination will require that the applicant take the entire course of training prescribed for each particular certificate.

R12-2-204. Prohibitions and Limitations ~~limitations, exceptions~~

- A. The practice of radiologic technology includes shall not be limited to the direct application of x-radiation. It shall include the technical instruction, and and/or supervision of diagnostic and therapeutic applications.
- B. The practical radiologic technologist Practical Technologist in radiology certificate, issued after August 27, 1978, authorizes the practical radiologic technologist Practical Technologist to perform only:

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1. Radiography of the chest; ~~(Heart and Lungs)~~
 2. Radiography of the upper extremities; or
 3. Radiography of the lower extremities.
- C. In addition to the anatomical limitation prescribed in subsection(B) Subsection B. of this Rule, the practical radiologic technologist ~~Practical Technologist~~ is prohibited from performing any radiography involving the use of contrast media.

R12-2-205. Certificate Expiration expiration

Failure to pay the renewal fee for certification, as specified in R12-2-206, renewal on or before the certificate's expiration date of the certificate will result in the expiration of the certificate. An expired certificate cannot be reinstated. An individual who fails to renew a certificate in a timely manner, shall ~~In order for an individual to receive a valid certificate if the individual reapplies for it according to R12-2-201 after he/she fails to renew his/her certificate, it will be necessary to reapply for such certificate as outlined in R12-2-201.~~

R12-2-206. Fees Schedule of fees

The certification renewal fee adopted by the Board is \$60. The initial application fee is specified in A.R.S. §32-2812.
Schedule of fees adopted by the Medical Radiologic Technology Board of Examiners:

1. Application fee \$60
2. Renewal fee \$60

R12-2-207. Changes of Name or Address; Duplicate Certificates ~~Change of name and/or address; duplicate certificate~~

- A. A holder of a certificate shall notify the Board of any change in name or address within 60 days of the change ~~will be required to keep the Board notified of his current name and address within sixty days of any changes. A holder of a certificate requesting a request for change of name on a the certificate shall submit the certificate containing the incorrect name will require submission of that certificate to the Board prior to before the Board issues issuance of a corrected certificate.~~
- B. A holder of a certificate shall receive a duplicate certificate upon submitting ~~Requirements for receiving a duplicate original certificate will require the certificate holder to submit to the Board a notarized statement describing, to the best of the certificate holder's his knowledge, the circumstances of the loss or destruction of the original certificate.~~

Ch. 2

MEDICAL RADIOLOGIC TECHNOLOGY
BOARD OF EXAMINERS

R12-2-201

ATTACHMENT I

STATE OF ARIZONA



MEDICAL
RADIOLOGIC
TECHNOLOGY
BOARD OF
EXAMINERS

925 S. 52nd Street, Suite 2 • Tempe, AZ 85281
Phone: (602) 255-4845

FOR OFFICE USE ONLY

CERTIFICATE APPLYING FOR:

(See General Information Sheet)

- ☐ Radiologic Technology
☐ Practical Technology
☐ Temporary Certificate
☐ Special Permit

APPLICATION FORM

PERSONAL INFORMATION:

1. Last Name		
2. First Name	Middle Name	Maiden Name
3. Other Names Formerly Used		
4. Mailing Address		
City		State Zip
Telephone No.		County
5. Permanent Address		Zip
6. Birthdate	Birthplace	
7. Marital Status	1. Never Married <input type="checkbox"/> 2. Married <input type="checkbox"/> 3. Separated <input type="checkbox"/> 4. Widowed <input type="checkbox"/> 5. Divorced <input type="checkbox"/>	
8. Sex	<input type="checkbox"/> Male <input type="checkbox"/> Female	

EDUCATIONAL INFORMATION:

A. Have you graduated from High School? (Check appropriate box)	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "No," proceed to 8. If "Yes," complete the following.	
(1) Your name at time of graduation	
(2) Name of High School	
(3) Location of High School	
City	State Zip
(4) Year of Graduation	

(Continued)

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R12-2-201

NATURAL RESOURCES

Title 12

B. Have you passed a High School Equivalency Test (G.E.D.)? (Check appropriate box) <input type="checkbox"/> Yes <input type="checkbox"/> No	
If "Yes," give:	
(1) Equivalency Certificate Number:	
(2) Your name and address at the time you took the test:	
(3) City and State in which you took the test:	
(4) Year of Graduation:	

MEDICAL RADIOGRAPHY EDUCATION

A. Name of School.			
Location:		City	State
Dates Attended:		From	To
Type of Diploma:		Degree	Certificate
		Date (to be awarded).	

B. Indicate the type of teaching facility where you received your training as a radiation operator. (Check appropriate box)	
<input type="checkbox"/> College/University	<input type="checkbox"/> Vocational/Technical School
<input type="checkbox"/> Junior Community College	<input type="checkbox"/> "On-the-Job" training
<input type="checkbox"/> Hospital	<input type="checkbox"/> Other (Specify) _____
<input type="checkbox"/> Military	

C. Indicate the type of program in which you received your training as a radiation operator. (Check appropriate box)	
<input type="checkbox"/> Radiologic Technology	<input type="checkbox"/> Practical Nurse
<input type="checkbox"/> Medical Assistance	<input type="checkbox"/> Other (Specify) _____
<input type="checkbox"/> Registered Nurse	

D. In what field of practice did you receive your diagnostic x-ray training?	
<input type="checkbox"/> Medicine/Osteopathy	
<input type="checkbox"/> Chiropractic	
<input type="checkbox"/> Podiatry	
<input type="checkbox"/> Other (Specify) _____	

E. Clinical (practicum) Affiliated Institutions.			
Name	Location (City & State)	Dates	Total Time

(Continued)

Ch. 2

**MEDICAL RADIOLOGIC TECHNOLOGY
BOARD OF EXAMINERS**

R12-2-201

PROFESSIONAL AFFILIATION:

A. Are you certified by a national organization (Registry) that attests to your competency as an operator of diagnostic x-ray equipment? (Check appropriate box) ☐ Yes ☐ No

B. If "Yes," list the name(s) of that national organization(s) and your certificate number(s) and submit a copy of the certificate with this application form.

National Organization Certificate Number

National Organization _____ Certificate Number _____

CREDENTIALS:

Do you possess a certificate from another state? ☐ Yes ☐ No

State	Title of Certificate or License	Number	Issue Date

WORK HISTORY LIST MOST RECENT EXPERIENCE FIRST

[illegible]

(Continued)

Arizona Administrative Register
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R12-2-201

NATURAL RESOURCES

Title 12

1. Have you ever been discharged from school or employment because your conduct or your work was not satisfactory? <input type="checkbox"/> Yes <input type="checkbox"/> No
If your answer is yes to the above question, give complete explanation on separate sheet.
2. Have you ever been convicted for any violation of any Federal law, State law, county or municipal law, regulation or ordinance? (Do not include traffic violations for which a fine of \$50 or less was imposed. Do not include anything that happened before your 16th birthday.) <input type="checkbox"/> Yes <input type="checkbox"/> No
If your answer is yes to the above question, give complete explanation on separate sheet.

AGREEMENT:

In consideration of the granting to me a permit or certification, or the renewal thereof, I do hereby agree to abide by all the rules and regulations of the Medical Radiologic Technology Board of Examiners, and to permit the Board, or its duly authorized representative, at all reasonable times opportunity to inspect my permit or certificate.

I also declare, subject to the penalties for perjury, that all the data appearing on this application is accurate and true to the best of my knowledge. I further understand that a false statement knowingly made by me may be cause for denial, revocation or suspension of any certificate pursuant to this application and for criminal prosecution and punishment.

This space for photograph of applicant's head and shoulders ONLY. Must have been taken within six months previous to date of application. NEWSPAPER CLIPPINGS, SUBSIZE PICTURES, ETC. WILL NOT BE ACCEPTED

Attach photograph by staples within this space.

(SIGNATURE OF APPLICANT)

(DATE)

Witnessed this _____ day of _____ 19 ____

(NOTARY PUBLIC SIGNATURE)

NOTARY. Please Note: Photograph of applicant must be attached above when applicant's signature is witnessed.

BEFORE YOU MAIL YOUR APPLICATION ...

- Have all questions on the application been answered???
- Is your application signed AND notarized???
- Have you enclosed documentary proof of High School graduation or Registry Certification???
- Have you enclosed your application ~~and Certification~~ fee???
- Have you enclosed an adequate photograph???

BE SURE!!! ...

Omission of any one of the required documents or incomplete information may result in **POSTPONEMENT** of your certification.

ARTICLE 4. SCHOOLS OF PRACTICAL RADIOLOGIC TECHNOLOGY TECHNOLOGIST IN RADIOLOGY

R12-2-401. Course Time-Frames time frame

The time-frame time frame for the course of study this course shall not be less than ~~6 six~~ (6) months or ~~not more than 9 nine~~ (9) months for completion of to complete both the 210 hours didactic training and 12 weeks of the ~~twelve~~ (12)-week clinical training.

R12-2-402. Clinical Training training

A. A school may provide clinical training Length. ~~Twelve~~ (12) weeks total. (These twelve weeks may be provided in 1 one general facility or 2 two specific clinical facilities.)

B. Types of clinical training facilities:

1. "General clinical facility" means a hospital, clinic, or doctor's office that provides General clinical facility. (Provides adequate clinical education in both chest and extremity radiography.) When 1 facility is utilized, adequate education requires the facility must be able to offer a minimum of 10 ten (10) examinations per day per student, of which 30 percent of the examinations are chest and 70 percent are extremities.
2. "Specific clinical facility" means a hospital, clinic, or doctor's office that Specific clinical facility: provides adequate clinical education in chest and extremity radiography. An adequate clinical education program shall include a minimum of 12 examinations per day per student and a maximum of 3 weeks devoted to chest examinations. (Provides adequate clinical education in either chest or extremity radiography.)
3. "Specific chest facility" means a hospital, clinic, or doctor's office that offers a minimum of 12 examinations per day per student. The training period at this type of facility shall not exceed 3 weeks. The student shall obtain the remaining 9 weeks of clinical training at a specific clinical facility offering experience in extremity radiography. Specific chest facility: The facility must be able to offer a minimum of (12) examinations per day per student. Three (3) weeks shall be devoted to chest examinations.

R12-2-403. Equipment and Facilities facility requirements

- A. A school is not required to have an Laboratory. An energized laboratory and equipment; ~~is not required, but if utilized, the laboratory and equipment shall must conform to Arizona Radiation Regulatory regulatory Agency rules regulations.~~
- B. A Library The school shall maintain a library of current books, journals, which shall contain adequate up-to-date scientific books periodicals, and other reference material commonly used in and related to the curriculum and profession.

R12-2-404. Program Administration Faculty

- A. General. One or more individuals may be responsible for the school's The program's administrative, supervisory, or educational duties may either be shared or divided between one or more individuals. However, these responsibilities shall be clearly stated in the school's as part of the program's administrative policies.
- B. The following personnel shall meet the listed minimum requirements: Minimum requirements
 1. Program Director. The Program Director shall be primarily responsible for the radiography educational program in radiography, and be 1 of the following:
 - a. An Arizona certified radiologic technologist Radiologic Technologist with a minimum of 2 two (2) years of post certification experience and 2 two (2) years of teaching experience in a diagnostic

radiologic technology program or equivalent, as determined by the Board, or its duly authorized representative; -

- b. A radiologic physicist Radiologic Physieist certified by the American College of Radiology or equivalent, as determined by the Board, or its duly authorized representative, with at least 2 two (2) years of experience as an instructor in an academic course of study in diagnostic radiologic technology or equivalent, as determined by the Board, or its duly authorized representative; or -
 - c. A radiologist Radiologist certified by the American College of Radiology, or equivalent, as determined by the Board, or its duly authorized representative, with at least 2 two (2) years of experience as a lecturer in an academic course of study in diagnostic radiologic technology or equivalent, as determined by the Board, or its duly authorized representative.
2. An instructor Instructors
 - a. An instructor All-instructors shall be qualified through academic preparation and experience to teach the assigned subjects, as determined by the Board, or its duly authorized representative. An instructor who is an Arizona certified radiologic technologist shall teach the following subjects: Instructors of the following subjects must be an Arizona certified Radiologic Technologist:
 - i. Adult and pediatric positioning (radiologic).
 - ii. Physics and technical factors.
 - iii. Film processing.
 - iv. Quality control.
 - v. Film critique.
 - vi. Survey of human disease, and
 - vii. Radiation protectionPositioning (radiographic) of adults and pediatrics, physics and techniques, processing, quality control, film critique, survey of diseases, and radiation protection.
 - b. A physician shall teach a survey of human disease and a physicist or a radiologist shall teach Survey of diseases may be taught by a physician and radiation protection, quality control, and physics may be taught by a physieist or a radiologist.
 3. Clinical supervision shall be provided by an individual who is: Clinical supervision
 - a. An Supervisors must be an Arizona certified radiologic technologist Radiologic Technologist with minimum of 2 two (2) years of experience; and
 - b. Supervision must be provided during the clinical training period by a supervisor who is available Available during the training period in the clinical area at all times when radiography is being performed.

R12-2-405. Didactic Training course descriptions

The required subjects and their minimum hours are as follows:

1. Professional ethics Ethics (5 hours).
 - a. Definition of ethics, nature of ethics, and value of ethics to the practical technologist, to the patient, and to the medical profession.
 - b. Professional secrecy and confidential knowledge regarding patients, physicians, and institutions, etc.
 - c. Practical technologist relationship to the patients, to other technologists, radiologists radiologist, attending physicians, and other members of the clinic or hospital.

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2. Office procedures: Procedures (5 hours).
 - a. An instructor shall stress office professionalism, including action, appearance, and speech. Special attention shall be given to handling telephone conversations so that essential information is obtained when scheduling radiography procedures. Professional adjustment and cooperation with others, professional bearing, appearance, and manner of speech. Handling telephone conversations.
 - b. Legal and ethical problems involving loan of films, ordering examinations, ownership of equipment, visitors in the radiographic rooms, records, and reports; use of equipment, and care of office equipment.
3. Anatomy, physiology Physiology, and medical terminology Medical Terminology (30 hours).
 - a. General nomenclature, anatomical names and terms.
 - b. Medical terminology, organs, systems, body cavities, and congenital anomalies related to the chest and extremities only.
4. Adult and pediatric positioning Positioning (radiographic) of Adults and Pediatrics (30 hours).
 - a. "General positioning nomenclature and terminology." An instructor shall familiarize each The student with the terms: will define general terms such as anterior, posterior, lateral, oblique, caudal, cephalad, tangential, supine, prone, upright, medial, flexion, extension, adduct, abduce and other terms used to correctly position patients for radiography ; etc.
 - b. "Procedure comprehension Comprehension". Under classroom conditions, an instructor shall train each student so that the student is able to The student will, under classroom conditions; describe the anatomy visualized; describe the positions used, in terms of direction of the central ray; and anatomical area of interest part placement; name the size of film ordinarily used; describe patient preparation, if necessary; the preparation, if any, of the patient; describe the special procedures applicable to radiographing specific regions of the body the specific region; identify radiographs of the basic radiographic positions; on radiographs, label the anatomic parts; explain variations in technical factors technique required for differences in patient habitus and similar anatomical areas of interest having different density, radiographic obstructions such as casts; avoid degradation of image quality from patient motion; and various patients types; describe variations in tube-film placement required to compensate for a patient's immobility, inability to be moved; explain variations in technique required for exposures through a cast; and explain variations in technique required to avoid motion on uncooperative patients.
 - c. "Procedure practice Practice". In a laboratory situation, using a patient or a phantom, an instructor shall train each student so that the student is able to The student will, in a laboratory situation and utilizing a patient or phantom, correctly position the correct anatomical the part, stabilizing or immobilizing the patient or phantom as needed; select the correct film size; align the x-ray tube to the anatomical part and film; and adjust the cone or collimator to the appropriate field size.
5. Physics and technical factors Techniques (50 hours).
 - a. "The structure of matter: "— the atom, elements, compounds, substances, mixtures, and modes of ionization.
 - b. "Production and properties of x-ray: "— nature of electromagnetic radiation, production of x-rays, interactions of x-ray with matter, detection of ionizing radiation, and specification of the x-ray beam.
 - c. "X-ray tubes: "— early x-ray tubes, modern x-ray tubes, stationary anode tubes, rotating anode tubes, types of tube cooling, tube housings and beam restricting systems, x-ray tube characteristics, focal spots, and x-ray tube rating charts.
 - d. "Radiographic algorithms arithmetic formulations" of a latent image and the ; prime factors of radiography (milliamperage, time, distance, and voltage).
 - e. Factors affecting radiographic quality (density, detail, contrast distortion, and magnification) as related to chest and extremities only.
 - f. Calibration, heat loading of x-ray tubes, conditions influencing choice of exposure factors, filters, grids, cones, cylinders, and diaphragms, calipers, cassettes, film holders, technique charts, and identification system. Discussion, problems and experiments related to time, source image receptor distance, milliamperage, peak kilovoltage, and what relationships can be established with combination of each of these parameters.
 - g. Discussions, problems, and experiments related to time, source image receptor distance, milliamperage, peak kilovoltage, and the relationships that can be established with combinations of each of these parameters, shall be provided to each student.
6. Processing (15 hours).
 - a. Darkroom construction, and equipment, and arrangement; illumination; and test for illumination and; x-ray film: handling, developing, and handling of film. Developing, rinsing, fixing, washing, and drying.
 - b. Preparation of solutions, types, and care of processing apparatus, including automatic processing, reduction of overexposed radiographs, and film artifacts and their uses.
7. Quality control Control (10 hours). An instructor shall train each student in the following subject areas: Section under quality control should include evaluation of film system procedures on film systems, radiographic

- machines, image quality, and ancillary equipment such as films, film screens, film holders, and grids.
8. Film critique Critique (20 hours).
 - a. "Patient's relevant clinical data;"— reasons for radiographic examination (pathology) and patient's assessment of the patient during the radiographic examination.
 - b. "Technique employed;"— technical factors and source image receptor distance.
 - c. "Collimation and shielding;"— film size, field size, shielding, and markers.
 - d. "Positioning;"— basic positioning and devices.
 - e. "Anatomy;"— radiographic anatomy and anatomical anomalies.
 - f. "Radiographic quality;"— density, contrast, resolution, distortion and magnification, fog, grids, film screens and film, film processing, and image artifacts.
 9. Survey of diseases Diseases (5 hours). Disease and injury encountered in This will be a discussion of the changes that occur in disease and injury and their application to the radiography of chest and extremities.
 10. Nursing procedures Procedures (10 hours). An instructor shall train each student in basic nursing practices, including emergency procedures. Provides the operator with some knowledge and background regarding proper care of patients of all types including emergency procedures necessary for patient care.
 11. Radiation protection Protection (30 hours).
 - a. Radiation protection will review atomic Atomic structure, properties of radiation, modes of x-ray production, and production of x-rays, x-ray their interaction with matter (absorption processes), units of radiation exposure and dosage, personal dosimetry and survey instruments, mechanisms of biological damage (stochastic and nonstochastic

effects short-term, long-term, genetic, and somatic effects).

- b. History and basic principles of radiation protection; standards for protection against ionizing radiation, including the principles of "ALARA" (As Low As Reasonably Achievable); methods for reducing maximum permissible dose, basic principles of radiation protection, reduction of exposure to personnel and patients, including the correct use of collimator filtration and proper kilovoltage, amperage, and time settings; formulation of x-ray exposure techniques; and basic x-ray calculation, special radiation protection measures for certain x-ray examinations, and factors affecting the film quality. Lectures An instructor shall demonstrate the importance of time, demonstrating distance and shielding, and scattering of x-rays, and patient protection utilizing parameters available for x-ray units such as collimator filtration, IVP, MA, etc.

R12-2-406 Approved schools

The following schools of Practical Technology in Radiology in the State of Arizona have been approved by the Board:

1. Health Careers Institute
4015B North 16th Street
Phoenix, AZ 85016

R12-2-406 School Approval

- A. An applicant seeking to open a Practical Radiologic Technology School shall apply to the Board by letter and shall address all of the issues in R12-2-401 through R12-2-405.
- B. The Board shall review a school application in a timely manner as required in A.A.C. R12-2-301 and approve or deny the application.
- C. The Board shall maintain a list of approved schools.

NOTICE OF PROPOSED RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 1. CORPORATION COMMISSION-CORPORATIONS AND ASSOCIATIONS

PREAMBLE

1. **Sections Affected**
R14-1-103
- Rulemaking Action**
New Section
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Arizona Constitution, Article XV
Authorizing statute: A.R.S. § 10-130
Implementing statute: A.R.S. §§ 41-1072 through -1078
3. **A list of all previous notices appearing in the Arizona Administrative Register addressing the proposed rules:**
Notice of Docket Opening: 4 A.A.R. 2710, September 25, 1998
4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Joanne MacDonnell, Director, Corporations Division
Bill Parkerson, Deputy Director, Corporations Division
Address: Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007
Telephone: (602) 542-3521
Fax: (602) 542-0900
5. **An explanation of the rule, including the agency's reasons for initiating the rule:**
The purpose of this rulemaking is to implement time-frames for the processing of applications for licenses and certificates issued by the Corporations Division of the Arizona Corporation Commission. This new section implements requirements identified in Arizona Revised Statutes §§ 41-1072 through -1078.
6. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
7. **The preliminary summary of the economic, small business, and consumer impact:**
Proposed Rule 103 establishes time-frames within the Corporations Division shall process articles of incorporation filed with the Commission pursuant to Title 10 and Title 29 of the Arizona Revised Statutes. Proposed Rule 103 is mandated by A.R.S. §§ 1072 through -1078 ("the time-frame statutes").

The Proposed Rule will have minimal financial impact unless the Commission routinely fails to meet the time-frames. Such failure would require the Commission to refund the filing fee to the applicant, resulting in a small cost savings to the regulated public. The Commission, however, does not foresee difficulty in complying with the proposed time-frames.
8. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**
Name: Joanne MacDonnell, Director, Corporations Division
Bill Parkerson, Deputy Director, Corporations Division
Address: Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007
Telephone: (602) 542-3521
Fax: (602) 542-0900
9. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**
Date: November 10, 1998
Time: 9:30 a.m.

Location: Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Nature: Oral Proceedings

10. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable

11. Incorporations by reference and their location in the rules:
None

12. The full text of the rules follows:

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 1. CORPORATION COMMISSION - CORPORATIONS AND ASSOCIATIONS

ARTICLE 1. IN GENERAL

Section

R14-1-103. Licensing time-frames

ARTICLE 1. IN GENERAL

R14-1-103. Licensing time-frames

- A.** This rule prescribes time-frames for the processing of any certificate or license issued by the Arizona Corporation Commission pursuant to Title 10 and Title 29 of the Arizona Revised Statutes.
- B.** Within 270 calendar days after receipt of an initial or renewal application for any certificate or license provided pursuant to Title 10 or Title 29 of the Arizona Revised Statutes, staff shall notify the applicant, in writing, that the application is

either administratively complete or deficient. If the application is deficient, the notice shall specify all deficiencies.

C. The Commission may terminate an application if the applicant does not remedy all deficiencies within 30 calendar days of the notice of deficiency.

D. After an application has been deemed administratively complete, and the applicant has been notified in writing, staff shall have 90 calendar days for substantive review of the application.

E. For purposes of A.R.S. § 41-1072, et seq., the Commission has established the following time-frames:

1. Administrative review time-frame: 270 calendar days.
2. Substantive review time-frame: 90 calendar days.
3. Overall time-frame: 360 calendar days.

NOTICE OF PROPOSED RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 2. CORPORATION COMMISSION-FIXED UTILITIES

PREAMBLE

1. Sections Affected

R14-2-212
R14-2-312
R14-2-411
R14-2-510
R14-2-610
R14-2-902
R14-2-1002
R14-2-1103
R14-2-1603

Rulemaking Action

Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 40-202, 40-204, 40-281, 40-282, 40-321, 40-361, 40-365, 40-367, 41-1072 through -1078 and Title 40 generally

Constitutional authority: Arizona Constitution, Article 15, §§ 1, 2, 3, 4, 6, 7 and 9

3. A list of all previous notices appearing in the Arizona Administrative Register addressing the proposed rules:

Notice of Docket Opening: 4 A.A.R. 2711, September 25, 1998

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Ray T. Williamson, Acting Director, Utilities Division

Address: Arizona Corporation Commission
1200 West Washington

Arizona Administrative Register
Notices of Proposed Rulemaking

Phoenix, Arizona 85007

Telephone: (602) 542-0745

Fax: (602) 542-2129

5. An explanation of the rule, including the agency's reasons for initiating the rule:

The purpose of this rulemaking is to implement time-frames for the processing of applications for Certificates of Convenience and Necessity ("CC&N") and applications to amend or change the status of any existing CC&N. These amendments implement requirements identified in Arizona Revised Statutes §§ 41-1072 through 41-1078.

6. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

7. The preliminary summary of the economic, small business, and consumer impact:

The proposed amendments to R14-2-212, R14-2-312, R14-2-411, R14-2-510, R14-2-610, R14-2-902, R14-2-1002, R14-2-1103 and R14-2-1603 establish the time-frames within which the Utilities Division (the "Division") of the Arizona Corporation Commission (the "Commission") shall process the applications for Certificate of Convenience and Necessity ("CC&N") by utility service providers under its jurisdiction. This rulemaking is mandated by Arizona Revised Statutes §§ 41-1072 through 41-1078. (the "time-frame statutes").

The increased cost to the Commission to provide staff time to draft the rule amendments and an economic and small business and consumer impact statement is minimal. The rules are not expected to result in any change in revenues. There are no expected increase in costs arising from noncompliance with the time-frames set by the rule.

Since no fees are collected from companies that apply for a CC&N, the time-frame rule will have no financial impact. All parties however, will benefit from a clear, concise, and an understandable certification process with definite time-frames. The use of definite time-frames prevents misunderstanding and promotes better communication between the Commission and the regulated public.

8. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Ray T. Williamson, Acting Director, Utilities Division

Address: Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Telephone: (602) 542-0745

Fax: (602) 542-2129

9. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: November 10, 1998

Time: 1 p.m.

Location: 1200 West Washington

Nature: Oral Proceedings

10. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

11. Incorporations by reference and their location in the rules:

Not applicable

12. The full text of the rules follows:

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 2. CORPORATION COMMISSION - FIXED UTILITIES

ARTICLE 2. ELECTRIC UTILITIES

Section
R14-2-212. Administrative and hearing requirements

-ARTICLE 3. GAS UTILITIES

R14-2-312. Administrative and hearing requirements

ARTICLE 4. WATER UTILITIES

R14-2-411. Administrative and hearing requirements

ARTICLE 5. TELEPHONE UTILITIES

R14-2-510. Administrative and hearing requirements

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ARTICLE 6. SEWER UTILITIES

R14-2-610. Administrative and hearing requirements

ARTICLE 9. CUSTOMER-OWNED PAY TELEPHONES

R14-2-902. Application for Certificate of Convenience and Necessity

ARTICLE 10. ALTERNATIVE OPERATOR SERVICES

R14-2-1002. Application for Certificate of Convenience and Necessity

ARTICLE 11. COMPETITIVE TELECOMMUNICATIONS SERVICES

R14-2-1103. Certificates of Convenience and Necessity Required

ARTICLE 16. RETAIL ELECTRIC COMPETITION

R14-2-1603. Certificates of Convenience and Necessity

ARTICLE 2. ELECTRIC UTILITIES

R14-2-212. Administrative and hearing requirements

- A. No change.
- B. No change.
- C. No change.
- D. No change.
- E. Time-frames for processing applications for Certificates of Convenience and Necessity
 - 1. This rule prescribes time-frames for the processing of any application for a Certificate of Convenience and Necessity issued by the Arizona Corporation Commission pursuant to this Article. These time-frames shall apply to applications filed on or after the effective date of this rule.
 - 2. Within 120 calendar days after receipt of an application for a new Certificate of Convenience and Necessity, or to amend or change the status of any existing Certificate of Convenience and Necessity, staff shall notify the applicant in writing that the application is either administratively complete or deficient. If the application is deficient, the notice shall specify all deficiencies.
 - 3. Staff may terminate an application if the applicant does not remedy all deficiencies within 60 calendar days of the notice of deficiency.
 - 4. After receipt of a corrected application, staff shall notify the applicant within 30 calendar days if the corrected application is either administratively complete or deficient. The time-frame for administrative completeness review shall be suspended from the time the notice of deficiency is issued until staff determines that the application is complete.
 - 5. Within 150 days after an application is deemed administratively complete, the Commission shall approve or reject the application.
 - 6. For purposes of A.R.S. § 41-1072, et seq., the Commission has established the following time-frames:
 - a. Administrative completeness review time-frame: 120 calendar days.
 - b. Substantive review time-frame: 150 calendar days.
 - c. Overall time-frame: 270 calendar days.
 - 7. If an applicant requests, and is granted, an extension or continuance, the appropriate time-frames shall be tolled from the date of the request during the duration of the extension or continuance.

8. During the substantive review time-frame, the Commission may, upon its own motion or that of any interested party to the proceeding, request a suspension of the time-frame rules.

E. ~~Incomplete application for a Certificate of Convenience, transfer of a Certificate of Convenience, rate review~~

1. ~~Applications will not be assigned a docket number until the application is complete according to the Arizona Revised Statutes and the Commission's rules and regulations.~~

2. ~~The Commission shall within 15 days of receipt return the incomplete application making note of such deficiencies.~~

F. No change.

G. No change.

H. No change.

I. No change.

J. No change.

ARTICLE 3. GAS UTILITIES

R14-2-312. Administrative and hearing requirements

- A. No change.
- B. No change.
- C. No change.
- D. No change.
- E. Time-frames for processing applications for Certificates of Convenience and Necessity
 - 1. This rule prescribes time-frames for the processing of any application for a Certificate of Convenience and Necessity issued by the Arizona Corporation Commission pursuant to this Article. These time-frames shall apply to applications filed on or after the effective date of this rule.
 - 2. Within 120 calendar days after receipt of an application for a new Certificate of Convenience and Necessity, or to amend or change the status of any existing Certificate of Convenience and Necessity, staff shall notify the applicant in writing that the application is either administratively complete or deficient. If the application is deficient, the notice shall specify all deficiencies.
 - 3. Staff may terminate an application if the applicant does not remedy all deficiencies within 60 calendar days of the notice of deficiency.
 - 4. After receipt of a corrected application, staff shall notify the applicant within 30 calendar days if the corrected application is either administratively complete or deficient. The time-frame for administrative completeness review shall be suspended from the time the notice of deficiency is issued until staff determines that the application is complete.
 - 5. Within 150 days after an application is deemed administratively complete, the Commission shall approve or reject the application.
 - 6. For purposes of A.R.S. § 41-1072, et seq., the Commission has established the following time-frames:
 - a. Administrative completeness review time-frame: 120 calendar days.
 - b. Substantive review time-frame: 150 calendar days.
 - c. Overall time-frame: 270 calendar days.
 - 7. If an applicant requests, and is granted, an extension or continuance, the appropriate time-frames shall be tolled from the date of the request during the duration of the extension or continuance.

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8. During the substantive review time-frame, the Commission may, upon its own motion or that of any interested party to the proceeding, request a suspension of the time-frame rules.

E. Incomplete application for a Certificate of Convenience, transfer of a Certificate of Convenience, rate review

1. Applications will not be assigned a docket number until the application is complete according to the Arizona Revised Statutes and the Commission's rules and regulations.
2. The Commission shall within 15 days of receipt return the incomplete application making note of such deficiencies.

- F. No change.
G. No change.
H. No change.
I. No change.
J. No change.

ARTICLE 4. WATER UTILITIES

R14-2-411. Administrative and hearing requirements

- A. No change.
B. No change.
C. Time-frames for processing applications for Certificates of Convenience and Necessity

1. This rule prescribes time-frames for the processing of any application for a Certificate of Convenience and Necessity issued by the Arizona Corporation Commission pursuant to this Article. These time-frames shall apply to applications filed on or after the effective date of this rule.
2. Within 30 calendar days after receipt of an application for a new Certificate of Convenience and Necessity, or to amend or change the status of any existing Certificate of Convenience and Necessity, staff shall notify the applicant, in writing, that the application is either administratively complete or deficient. If the application is deficient, the notice shall specify all deficiencies.
3. Staff may terminate an application if the applicant does not remedy all deficiencies within 60 calendar days of the notice of deficiency.
4. After receipt of a corrected application, staff shall notify the applicant within 30 calendar days if the corrected application is either administratively complete or deficient. The time-frame for administrative completeness review shall be suspended from the time the notice of deficiency is issued until staff determines that the application is complete.
5. Within 150 days after an application is deemed administratively complete, the Commission shall approve or reject the application.
6. For purposes of A.R.S. § 41-1072, et seq., the Commission has established the following time-frames:
- a. Administrative completeness review time-frame: 30 calendar days.
- b. Substantive review time-frame: 150 calendar days.
- c. Overall time-time: 180 calendar days.
7. If an applicant requests, and is granted, an extension or continuance, the appropriate time-frames shall be tolled from the date of the request during the duration of the extension or continuance.
8. During the substantive review time-frame, the Commission may, upon its own motion or that of any interested

party to the proceeding, request a suspension of the time-frame rules.

G. Incomplete application for a Certificate of Convenience, transfer of a Certificate of Convenience, rate review

1. Applications will not be assigned a docket number until the application is complete according to the Arizona Revised Statutes and the Commission's rules and regulations.
2. The Commission shall within 15 days of receipt return the incomplete application making note of such deficiencies.
- D. No change.
E. No change.
F. No change.
G. No change.

ARTICLE 5. TELEPHONE UTILITIES

R14-2-510. Administrative and hearing requirements

- A. No change.
B. No change.
C. No change.
D. No change.
E. Time-frames for processing applications for Certificates of Convenience and Necessity

1. This rule prescribes time-frames for the processing of any application for a Certificate of Convenience and Necessity issued by the Arizona Corporation Commission pursuant to this Article. These time-frames shall apply to applications filed on or after the effective date of this rule.
2. Within 30 calendar days after receipt of an application for a new Certificate of Convenience and Necessity, or to amend or change the status of any existing Certificate of Convenience and Necessity, staff shall notify the applicant, in writing, that the application is either administratively complete or deficient. If the application is deficient, the notice shall specify all deficiencies.
3. Staff may terminate an application if the applicant does not remedy all deficiencies within 60 calendar days of the notice of deficiency.
4. After receipt of a corrected application, staff shall notify the applicant within 30 calendar days if the corrected application is either administratively complete or deficient. The time-frame for administrative completeness review shall be suspended from the time the notice of deficiency is issued until staff determines that the application is complete.
5. Within 150 days after an application is deemed administratively complete, the Commission shall approve or reject the application.
6. For purposes of A.R.S. § 41-1072, et seq., the Commission has established the following time-frames:
- a. Administrative completeness review time-frame: 30 calendar days.
- b. Substantive review time-frame: 150 calendar days.
- c. Overall time-frame: 180 calendar days.
7. If an applicant requests, and is granted, an extension or continuance, the appropriate time-frames shall be tolled from the date of the request during the duration of the extension or continuance.
8. During the substantive review time-frame, the Commission may, upon its own motion or that of any interested party to the proceeding, request a suspension of the time-frame rules.

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~~E. Incomplete application for a Certificate of Convenience, transfer of a Certificate of Convenience, rate review, or financing requests~~

- ~~1. Applications will not be docketed until the application is complete according to the Arizona Revised Statutes and the Commission's rules and regulations.~~
- ~~2. The Commission shall within 15 days of receipt return the application making note of such deficiencies.~~

- F. No change.
G. No change.
H. No change.
I. No change.
J. No change.

ARTICLE 6. SEWER UTILITIES

R14-2-610. Administrative and hearing requirements

- A. No change.
B. No change.
C. Time-frames for processing applications for Certificates of Convenience and Necessity
1. This rule prescribes time-frames for the processing of any Application for a Certificate of Convenience and Necessity issued by the Arizona Corporation Commission pursuant to this Article. These time-frames shall apply to applications filed on or after the effective date of this rule.
 2. Within 30 calendar days after receipt of an application for a new Certificate of Convenience and Necessity, or to amend or change the status of any existing Certificate of Convenience and Necessity, staff shall notify the applicant in writing, that the application is either administratively complete or deficient. If the application is deficient, the notice shall specify all deficiencies.
 3. Staff may terminate an application if the applicant does not remedy all deficiencies within 60 calendar days of the notice of deficiency.
 4. After receipt of a corrected application, staff shall notify the applicant within 30 calendar days if the corrected application is either administratively complete or deficient. The time-frame for administrative completeness review shall be suspended from the time the notice of deficiency is issued until staff determines that the application is complete.
 5. Within 150 days after an application is deemed administratively complete, the Commission shall approve or reject the application.
 6. For purposes of A.R.S. § 41-1072, et seq., the Commission has established the following time-frames:
 - a. Administrative completeness review time-frame: 30 calendar days.
 - b. Substantive review time-frame: 150 calendar days.
 - c. Overall time-frame: 180 calendar days.
 7. If an applicant requests, and is granted, an extension or continuance, the appropriate time-frames shall be tolled from the date of the request during the duration of the extension or continuance.
 8. During the substantive review time-frame, the Commission may, upon its own motion or that of any interested party to the proceeding, request a suspension of the time-frame rules.
- ~~G. Incomplete application for a Certificate of Convenience, transfer of a Certificate of Convenience, rate review, or financing requests~~

- ~~1. Applications will not be docketed until the application is complete according to the Arizona Revised Statutes and the Commission's rules and regulations.~~
- ~~2. The Commission shall within 15 days of receipt return the incomplete application making note of such deficiencies.~~

- D. No change.
E. No change.
F. No change.
G. No change.

ARTICLE 9. CUSTOMER-OWNED PAY TELEPHONES

R14-2-902. Application for Certificate of Convenience and Necessity

- A. No change.
B. No change.
C. No change.
D. No change.
E. Time-frames for processing applications for Certificates of Convenience and Necessity
1. This rule prescribes time-frames for the processing of any application for a Certificate of Convenience and Necessity issued by the Arizona Corporation Commission pursuant to this Article. These time-frames shall apply to applications filed on or after the effective date of this rule.
 2. Within 30 calendar days after receipt of an application for a new Certificate of Convenience and Necessity, or to amend or change the status of any existing Certificate of Convenience and Necessity, staff shall notify the applicant in writing, that the application is either administratively complete or deficient. If the application is deficient, the notice shall specify all deficiencies.
 3. Staff may terminate an application if the applicant does not remedy all deficiencies within 60 calendar days of the notice of deficiency.
 4. After receipt of a corrected application, staff shall notify the applicant within 30 calendar days if the corrected application is either administratively complete or deficient. The time-frame for administrative completeness review shall be suspended from the time the notice of deficiency is issued until staff determines that the application is complete.
 5. Within 150 days after an application is deemed administratively complete, the Commission shall approve or reject the application, unless a formal hearing is held.
 6. For purposes of A.R.S. § 41-1072, et seq., the Commission has established the following time-frames:
 - a. Administrative completeness review time-frame: 30 calendar days.
 - b. Substantive review time-frame: 150 calendar days.
 - c. Overall time-frame: 180 calendar days.
 7. If an applicant requests, and is granted, an extension or continuance, the appropriate time-frames shall be tolled from the date of the request during the duration of the extension or continuance.
 8. During the substantive review time-frame, the Commission may, upon its own motion or that of any interested party to the proceeding, request a suspension of the time-frame rules.

~~E.F. Subsequent to adoption of this Article, the Commission shall issue an order setting time limitations within which LECs, as well as all customers of record providing service as of the~~

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effective date of this Article, shall comply with the requirements contained herein.

ARTICLE 10. ALTERNATIVE OPERATOR SERVICES

R14-2-1002. Application for Certificate of Convenience and Necessity

- A. No change.
- B. No change.
- C. No change.
- D. No change.
- E. Time-frames for processing applications for Certificates of Convenience and Necessity
 - 1. This rule prescribes time-frames for the processing of any Application for a Certificate of Convenience and Necessity issued by the Arizona Corporation Commission pursuant to this Article. These time-frames shall apply to applications filed on or after the effective date of this rule.
 - 2. Within 365 calendar days after receipt of an application for a new Certificate of Convenience and Necessity, or to amend or change the status of any existing Certificate of Convenience and Necessity, staff shall notify the applicant, in writing, that the application is either administratively complete or deficient. If the application is deficient, the notice shall specify all deficiencies.
 - 3. Staff may terminate an application if the applicant does not remedy all deficiencies within 60 calendar days of the notice of deficiency.
 - 4. After receipt of a corrected application, staff shall notify the applicant within 30 calendar days if the corrected application is either administratively complete or deficient. The time-frame for administrative completeness review shall be suspended from the time the notice of deficiency is issued until staff determines that the application is complete.
 - 5. Within 365 calendar days after an application is deemed administratively complete, the Commission shall approve or reject the application.
 - 6. For purposes of A.R.S. § 41-1072, et seq., the Commission has established the following time-frames:
 - a. Administrative completeness review time-frame: 365 calendar days.
 - b. Substantive review time-frame: 365 calendar days.
 - c. Overall time-frame: 730 calendar days.
 - 7. If an applicant requests, and is granted, an extension or continuance, the appropriate time-frames shall be tolled from the date of the request during the duration of the extension or continuance.
 - 8. During the substantive review time-frame, the Commission may, upon its own motion or that of any interested party to the proceeding, request a suspension of the time-frame rules.

**ARTICLE 11. COMPETITIVE
TELECOMMUNICATIONS SERVICES**

R14-2-1103. Certificates of Convenience and Necessity Required

- A. All telecommunications companies providing intrastate telecommunications services shall obtain a Certificate of Convenience and Necessity from the Commission, either under this Article, if competitive services are to be provided or, under Article 5. If the Commission determines that the services identified in an Application filed under this Article are not competitive, the Commission may nevertheless grant a Cer-

tificate and authorize provision of the services on a noncompetitive basis pursuant to Article 5.

B. Time-frames for processing applications for Certificates of Convenience and Necessity

- 1. This rule prescribes time-frames for the processing of any application for a Certificate of Convenience and Necessity issued by the Arizona Corporation Commission pursuant to this Article. These time-frames shall apply to applications filed on or after the effective date of this rule.
- 2. Within 10 calendar days after receipt of an application for a new Certificate of Convenience and Necessity, or to amend or change the status of any existing Certificate of Convenience and Necessity, staff shall notify the applicant, in writing, that the application is either administratively complete or deficient. If the application is deficient, the notice shall specify all deficiencies.
- 3. Staff may terminate an application if the applicant does not remedy all deficiencies within 60 calendar days of the notice of deficiency.
- 4. After receipt of a corrected application, staff shall notify the applicant within 30 calendar days if the corrected application is either administratively complete or deficient. The time-frame for administrative completeness review shall be suspended from the time the notice of deficiency is issued until staff determines that the application is complete.
- 5. Within 270 days after an application is deemed administratively complete, the Commission shall approve or reject the application, unless a formal hearing is held.
- 6. For purposes of A.R.S. § 41-1072, et seq., the Commission has established the following time-frames:
 - a. Administrative completeness review time-frame: 10 calendar days.
 - b. Substantive review time-frame: 270 calendar days.
 - c. Overall time-frame: 280 calendar days.
- 7. If an applicant requests, and is granted, an extension or continuance, the appropriate time-frames shall be tolled from the date of the request during the duration of the extension or continuance.
- 8. During the substantive review time-frame, the Commission may, upon its own motion or that of any interested party to the proceeding, request a suspension of the time-frame rules.

ARTICLE 16. RETAIL ELECTRIC COMPETITION

R14-2-1603. Certificates of Convenience and Necessity

- A. No change.
- B. No change.
- C. No change.
- D. No change.
- E. No change.
- F. No change.
- G. No change.
- H. No change.
- I. No change.
- J. Time-frames for processing applications for Certificates of Convenience and Necessity
 - 1. This rule prescribes time-frames for the processing of any application for a Certificate of Convenience and Necessity issued by the Arizona Corporation Commission pursuant to this Article. These time-frames shall apply to applications filed on or after the effective date of this rule.

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2. Within 120 calendar days after receipt of an application for a new Certificate of Convenience and Necessity, or to amend or change the status of any existing Certificate of Convenience and Necessity, staff shall notify the applicant in writing, that the application is either administratively complete or deficient. If the application is deficient, the notice shall specify all deficiencies.
3. Staff may terminate an application if the applicant does not remedy all deficiencies within 60 calendar days of the notice of deficiency.
4. After receipt of a corrected application, staff shall notify the applicant within 30 calendar days if the corrected application is either administratively complete or deficient. The time-frame for administrative completeness review shall be suspended from the time the notice of deficiency is issued until staff determines that the application is complete.
5. Within 180 calendar days after an application is deemed administratively complete, the Commission shall approve or reject the application.
6. For purposes of A.R.S. § 41-1072, et seq., the Commission has established the following time-frames:
 - a. Administrative completeness review time-frame: 120 calendar days.
 - b. Substantive review time-frame: 180 calendar days.
 - c. Overall time-frame: 300 calendar days.
7. If an applicant requests, and is granted, an extension or continuance, the appropriate time-frames shall be tolled from the date of the request during the duration of the extension or continuance.
8. During the substantive review time-frame, the Commission may, upon its own motion or that of any interested party to the proceeding, request a suspension of the time-frame rules.

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION MOTOR VEHICLE DIVISION

PREAMBLE

1. **Sections affected:**

R17-4-435	<u>Rulemaking Action:</u>
R17-4-435.01	Amend
R17-4-435.02	Amend
R17-4-435.03	Amend
R17-4-435.04	Amend
R17-4-435.05	Amend
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 28-366

Implementing statutes: A.R.S. § 28-5204
3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Glenn C. Johnson
Address:	Motor Vehicle Division Executive Hearing Office 4747 North Seventh Avenue Phoenix, Arizona 85013-2401
Telephone:	(602) 255-7737
Fax:	(602) 241-1624
4. **An explanation of the rules, including the agency's reasons for initiating the rules:**

The Motor Vehicle Division is amending the rules to adopt the October 1, 1996, edition of Title 49 of the Code of Federal Regulations. Specifically, the Division is adopting Subtitle B - Other Regulations Relating to Transportation, Chapter B - Federal Motor Carrier Safety Regulations, Parts 40, 382, 390, 391, 392, 393, 395, 396, 397, and 399. The existing rule adopted the October 1, 1993 edition of the Code of Federal Regulations.

As a participant in the Motor Carrier Safety Assistance Program, Arizona has agreed to adopt and maintain rules consistent with the Federal Motor Carrier Safety Regulations. The Department of Transportation and the Department of Public Safety have certified, in the State Enforcement Plan, that the State will adopt and enforce the Motor Carrier Safety Regulations as required under the provisions of the Motor Carrier Safety Assistance Program as specified in the Code of Federal Regulations, Title 49, Parts 350 and 355.

The amendments to the rules are necessary to update the Motor Vehicle Division's rules governing motor carrier safety Modifications to the text incorporated by reference are only intended to make the language consistent with state terminology and are not intended to make any change to the content.

5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

6. **The preliminary summary of the economic, small business, and consumer impact:**

There are 2 changes which will have an economic impact on intrastate motor carriers.

I. Implementation of 49 CFR 40 and 49 CFR 382 requires intrastate motor carriers to implement commercial driver drug and alcohol testing programs identical to the drug and alcohol testing programs interstate carriers have been required to implement and administer for many years.

Arizona law enforcement agencies, particularly the Department of Public Safety strongly supports implementation of 49 CFR 40 and 49 CFR 382 because the drug and alcohol testing provisions cannot be enforced by local law enforcement agencies until the provisions are adopted as a state rule.

Because the proposed drug and alcohol testing provisions must be implemented by the affected motor carriers themselves rather than by the state, it is not anticipated that certification of 49 CFR 40 and 49 CFR 382 will either have an economic impact on the State or any state agency, and it is not believed that the proposed provisions are in conflict with any existing statutes involving the illegal use of drugs of alcohol.

Because the drug and alcohol testing provisions will be administered by motor carriers there will be an obvious economic impact on affected intrastate carriers. This impact, however, will be no greater than the impact on interstate carriers who have been required to implement drug and alcohol programs for many years.

Further, the Division believes the positive impact on highway and public safety anticipated by the ability to enforce commercial driver drug and alcohol testing provisions clearly outweighs the cost of the rules.

II. The proposed amendments implement an intrastate pilot program which allows qualified individuals who are insulin dependent to be issued commercial driver licenses.

It is believed that this pilot program will affect approximately 200 potential applicants statewide who will become eligible to be employed as commercial drivers. The positive economic impact for these potential commercial licensees who have not previously been eligible for employment as commercial drivers is obvious.

The State of Arizona was recently sued by an individual whose commercial driver license was withdrawn because the individual failed to meet commercial driver licensing medical standards because of an insulin dependent diabetic condition. The lawsuit involved an allegation that the withdrawal action violated the Americans With Disabilities Act (ADA).

Because the State of Arizona and the Motor Vehicle Division are committed to absolute compliance with the ADA, this lawsuit was settled, and as part of the settlement the Motor Vehicle Division agreed to initiate the Insulin Dependent Pilot Program set forth in the proposed amendments. The settlement was entered into by the Division both because it is right to be in compliance with the ADA and because of the economic impact in damages the State and its citizens are potentially exposed to by non-compliance with the ADA.

It is noted that approximately 14 states have initiated similar programs, and there is no accident data in any of those jurisdictions indicating that insulin dependent diabetic commercial drivers create a highway safety problem.

Clearly the positive economic impact to potential commercial licensees who will be able to seek employment as drivers coupled with no anticipated negative impact on highway safety outweigh the negative economic impact the State and Motor Vehicle Division are exposed to by possible violation of the ADA.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Glenn C. Johnson
Address: Motor Vehicle Division Executive Hearing Office
4747 North Seventh Avenue
Phoenix, Arizona 85013-2401
Telephone: (602) 255-7737
Fax: (602) 241-1624

8. **The time, place, and nature of the proceedings for the amendment of the rules:**

An oral proceeding on the proposed rulemaking is scheduled as follows:

Date: November 9, 1998
Time: 9 a.m.
Location: Department of Transportation Auditorium
206 South 17th Avenue
Phoenix, Arizona 85007

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.

10. Incorporations by reference and their location in the rules:

R17-4-435 incorporates by reference the October 1, 1996 edition of Title 49 of the Code of Federal Regulations, Parts 40, 382, 390, 391, 392, 393, 395, 396, 397, and 399.

R17-4-435.01 incorporates by reference the October 1, 1996 edition of Title 49 of the Code of Federal Regulations, Part 390.

R17-4-435.02 incorporates by reference the October 1, 1996 edition of Title 49 of the Code of Federal Regulations, Part 391.

R-17-4-435.03 incorporates by reference the October 1, 1996 edition of Title 49 of the Code of Federal Regulations, Part 382.

R-17-4-435.04 incorporates by reference the October 1, 1996 edition of 49 of the Code of Federal Regulations, Part 392 and Part 397.

11. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION - MOTOR VEHICLE DIVISION

ARTICLE 5. MOTOR CARRIERS

Section

R17-4-435. Motor Carrier Safety: Adoption of Federal Regulations; Definitions; Application

R17-4-435.01. Motor Carrier Safety: 49 CFR 390-Federal Motor Carrier Safety Regulations; General Applicability and Definitions; General Requirements and Information

R17-4-435.02. Motor Carrier Safety; 49 CFR 391-Qualification of Drivers

R17-4-435.03. Motor Carrier Safety: ~~49 CFR 391-Subpart H-Controlled Substance Testing~~ 49 CFR 382 - Controlled substance and alcohol use testing

R17-4-435.04. Motor Carrier Safety: Amendments to 49 CFR 392 and 397

R17-4-435.05. Civil penalties

R17-4-435. Motor Carrier Safety: Adoption of Federal Regulations; Definitions; Application

A. The Motor Vehicle Division adopts 49 CFR 40, 382, 390, 391, 392, 393, 395, 396, 397, and 399 published October 1, 1993 1996 (and no later amendments or editions) incorporated by reference and on file with The Federal Highway Administration, Office of Motor Carriers, the Division and the Office of the Secretary of State as amended by these rules.

B. Definitions.

1. "Bureau of Motor Carrier Safety" means the Department of Transportation.
2. "Co-applicant" means an employer or potential employer.
3. "Division" means the Motor Vehicle Division, Department of Transportation.
4. "Division Director" means the Assistant Director of the Department of Transportation for the Motor Vehicle Division or the Assistant Director's designated agent.
5. ~~"Waiver Board" means 4 individuals appointed by the Division Director to make recommendations on applications for intrastate waivers.~~

6 5. "49 CFR" means Title 49, Code of Federal Regulations.

C. Application. The regulations of 49 CFR, incorporated by subsection (A) apply as amended by R17-4-435.01 through R17-4-435.04 to:

1. Motor Carriers as defined in A.R.S. § 28-2401~~5201~~ except motor carriers transporting passengers for hire in a vehicle with a design capacity of 6 or fewer individuals.

2. All vehicles owned or operated by the state, a political subdivision, or a public authority of the state, which are used to transport hazardous materials ~~in an amount requiring the vehicle to be marked or placarded~~ pursuant to R17-4-436.

R17-4-435.01 Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General Applicability and Definitions; General Requirements and Information

49 CFR 390, as incorporated in these rules, is amended as follows:

1. 49 CFR 390.3 General applicability.

a. Paragraph (a) is amended to read:

The regulations adopted in this rule are applicable to all motor carriers operating in Arizona and all vehicles owned or operated by the state, a political subdivision, or a public authority of the state, which are used to transport hazardous materials in an amount requiring the vehicle to be marked or placarded pursuant to R17-4-436.

b. Paragraph (b)~~c~~ is amended by adding the following sentence at the

In addition to the requirements specified in 49 CFR 383, motorcarrier drivers domiciled in Arizona who operate Commercial Motor Vehicles as defined in A.R.S. § 28-402 3001 shall comply with the requirements of A.R.S. Title 28, Chapter 4~~8~~ and any rules promulgated under that Chapter.

c. Paragraph e~~d~~ is amended to read:

Motor carriers operating in Arizona in the furtherance of a commercial enterprise, shall comply with the financial responsibility requirements specified in A.R.S. Title 28, Chapter 7~~2~~, Article 7~~2~~, and 49 CFR 387.

2. 49 CFR 390.5 Definitions. The definitions listed in 49 CFR 390.5 are amended as follows:

a. If the term "Commercial Motor Vehicle" or "CMV" is used in reference to the controlled substances and alcohol use and testing requirements of 49 CFR 382, the term has the meaning set forth at 49 CFR 382. If the term "Commercial Motor Vehi-

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- cle" or "CMV" is used in reference to the licensing requirements of either 49 CFR 383 or A.R.S. § 28-402 3001, the term has the meaning set forth at 49 CFR 383 or A.R.S. § 28-402 3001. If the term "Commercial Motor Vehicle" or "CMV" is not used in reference to the controlled substances and alcohol use and testing requirements of 49 CFR 383 or the licensing requirements of 49 CFR 383 or A.R.S. § 28-402 3001, the term means a self propelled motor-driven vehicle or vehicle combination, used on a public highway in this state in the furtherance of a commercial enterprise, which:
- i. Has a declared gross weight of 20,001 gross vehicle weight rating (GVWR) as a single vehicle or a combination gross vehicle weight rating (CGVWR) of 18,001 pounds or more; or
 - ii. Transports passengers for hire and has a design capacity of 7 or more individuals; or
 - iii. Transports hazardous materials in amount requiring marking or placarding pursuant to R17-4-436.
- b. "Exempt intracity zone" is deleted from R17-4-435.01 through R17-4-435.04 and has no application in these rules.
- c. "For-hire motor carrier," "private motor carrier of passengers," and "private motor carrier of property" "private motor carrier," "private motor carrier of passengers (business)" and "private motor carrier of passengers (nonbusiness)" are deleted from R17-4-435.01 through R17-4-435.04 and the term "motor carrier" is used.
- d. "Gross combination weight rating" (GCWR) and "Gross vehicle weight rating" (GVWR) mean declared gross weight as defined in A.R.S. § 28-206. Combination gross vehicle weight rating (CGVWR) and gross vehicle weight rating (GVWR) has the meaning prescribed in 49 CFR 390.5, Definitions.
- e. "Regional Director" means the Division Director.
- f. "Special agent" means an officer or agent of the Department of Public Safety, the Motor Vehicle Division, or of a political subdivision, who is trained and certified by the Department of Public Safety to enforce Arizona's Motor Carrier Safety requirements.
- g. "State" means a state of the United States and the District of Columbia.
3. 49 CFR 390.15 Assistance in investigations and special studies. Paragraph (a) is amended to read:
- A motor carrier shall make all records and information pertaining to an accident available to a special agent upon request or as part of any inquiry within the time the request or inquiry specifies. A motor carrier shall give a special agent all reasonable assistance in the investigation of any accident including providing a full, true, and correct answer to any question of the inquiry.
4. 49 CFR 390.21 Marking of motor vehicles. Paragraph (a) is amended to read:
- This Section applies to all motor carrier vehicles operated in Arizona. A motor carrier that is not subject to the marking requirements of the U.S. Department of Transportation shall mark its vehicles with the letters "AZ" and its Arizona Use Fuel/Motor Carrier account number. No identification number marking shall be required for a motor carrier exempt from the Use Fuel/Motor Carrier License requirement the company name or business trade name and the city and state (the state may be abbreviated to "AZ").
5. 49 CFR 390.23 Relief from regulations.
- a. Paragraph (a) is amended to read:
The regulations contained in 49 CFR 390 through 397 do not apply to a motor carrier that is not subject to federal jurisdiction and that operates a commercial motor vehicle used or designated to provide relief during an emergency.
 - b. Paragraphs (a)(1), (a)(1)(A), (a)(1)(B), and (a)(1)(B)(ii) are deleted.
 - c. Paragraph (a)(2)(A) is amended as follows:
An emergency has been declared by a federal, state, or local government official having authority to declare an emergency, and
 - d. Paragraph (a)(2)(B) is amended as follows:
The Arizona Department of Public Safety, Special Services Region, determines that a local emergency exists that justifies an exemption from any or all of these Parts. If the Arizona Department of Public Safety, Special Services Region determines that relief from these regulations is necessary to provide vital service to the public, relief shall be granted with any restrictions the Arizona Department of Public Safety considers necessary.
 - e. Paragraph (b) is amended as follows:
"Interstate commerce" means in the furtherance of a commercial enterprise.
6. 49 CFR 390.25 Extensions of relief from regulations - emergencies is amended as follows:
- A motor carrier seeking to extend a period of relief from these regulations shall obtain approval from the Arizona Department of Public Safety, Special Services Region. The motor carrier shall give full details of the additional relief requested. Taking into account the severity of the emergency and the nature of the relief services to be provided by the motor carrier, the Arizona Department of Public Safety shall extend a period of relief with any restrictions deemed necessary.
7. 49 CFR 390.27 Locations of regional motor carrier safety offices is amended to read:
- To make a request for relief from these regulations, the motor carrier requesting relief shall contact the Arizona Department of Public Safety, Special Services Region, Telephone (602) 223-2212.
- R17-4-435.02. Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers**
- 49 CFR 391, as incorporated in these rules, is amended as follows:
1. 49 CFR 391.2 General exemptions. The exceptions for "exempt intracity zone drivers" in paragraph (d) are deleted.
 2. 49 CFR 391.11 Qualifications of drivers. Paragraph (b)(1) is amended to read:
Is at least 21 years of age for interstate operation; and at least 18 years of age for operations restricted to intrastate transportation not

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involving the transportation of reportable quantities of hazardous substances, hazardous wastes required to be manifested or hazardous materials in an amount requiring the vehicle to be marked or placarded pursuant to R17-4-436.

3. 49 CFR 391.49 Waiver of certain physical defects.

a. Paragraph (a) is amended by adding:

An individual who is not physically qualified to drive under 49 CFR 391.41(b)(1), (b)(2) (b)(3) or (b)(10) who is otherwise qualified to drive a motor vehicle, may drive a motor vehicle in intrastate commerce if the Division Director has granted an intrastate waiver to the individual. Application for an intrastate waiver shall be submitted in accordance with subsection (4). If granted, an intrastate waiver shall be for a period not exceeding 2 years. An individual granted an intrastate waiver may transfer the intrastate waiver from an original employer to a new employer upon written notification to the Division Director stating the name of the new employer and the type of equipment to be driven.

b. Paragraph (b) is amended by adding:

To obtain an intrastate waiver, an applicant or an applicant and co-applicant shall submit a letter of application for an intrastate waiver of a physical qualification. The application shall be addressed to the Motor Vehicle Division, P.O. Box 2100, Mail Drop 531 512M, Phoenix, Arizona 85001-2100. The driver applicant shall comply with all the requirements of 49 CFR 391.49(c), "Waiver of certain physical defects", except paragraphs (c)(1)(i) and (c)(1)(iii). The driver applicant shall respond to the requirements of 49 CFR 391.49(c)(2)(ii) through (c)(2)(v), if the information is known.

c. Paragraph (c)(1)(iv) is amended to read:

A description of the driver applicant's limb impairment, diabetic condition or visual impairment for which waiver is requested.

d. Paragraph (d)(3)(i) is amended to read:

The medical evaluation summary for a driver applicant disqualified under 49 CFR 391.41 (b)(1) or (b)(10) shall include:

e. Paragraph (d)(3)(i)(B) is amended by adding:

Or a statement by the examiner that the applicant for an intrastate waiver has distant visual acuity of at least 20/40 (Snellen), with or without a corrective lens, in 1 eye; a field of vision of at least 70 degrees in 1 direction and 35 degrees in the other direction of the horizontal meridian of the applicant's dominant eye; and the ability to distinguish the colors of traffic signals and devices showing standard red, green, and amber.

f. Paragraph (d)(3)(iii) is added:

The medical evaluation for a driver applicant disqualified under 49 CFR 391.41(b)(3) shall include the requirements found in 49 CFR 391.64.

g. Paragraph (j) is amended by adding:

If an individual with a distant visual acuity of at least 20/40 (Snellen), with or without a corrective lens, in 1 eye; a field of vision of at least 70 degrees in 1 direction and 35 degrees in the other direction of the horizontal meridian of the individual's dominant eye; and the ability to distinguish the colors of the traffic signals and devices showing standard red, green and amber, that individual shall not transport any amount of hazardous materials required to be marked or placarded pursuant to R17-4-436 nor operate a vehicle for the purpose of transporting passengers pursuant to R17-4-435.

4. Waiver procedures for intrastate drivers.

a. The Division Director shall: review and approve or deny each waiver application.

i. Appoint a Waiver Board consisting of the Division's Driver Waiver Program Manager or designated alternate, the Division's Medical Review Officer and 2 other individuals to consider requests for physical waivers; and

ii. Approve or deny a physical waiver after consideration of the recommendation submitted by the Waiver Board.

b. The Waiver Board shall:

i. Meet within not less than 20 or more than 30 days of receipt of an intrastate waiver application;

ii. Review the application to ensure that all provisions of 49 CFR 391.49 are met;

iii. Take necessary testimony and accept documentation and information pertinent to the application;

iv. Ensure that drivers applying for an intrastate waiver of the visual requirements:

(1) Have driven the type of vehicle to be operated under the waiver for at least 2 of the previous 5 years; and (2) Will not transport passengers for hire or transport reportable quantities of hazardous substances, hazardous wastes required to be manifested or hazardous materials required to be marked or placarded pursuant to R17-4-436;

v. Submit a written recommendation to the Division Director to approve or deny the waiver; and

vi. Notify the applicant by mail of:

(1) The date, time, and place of the review at least 5 days before the review; and

(2) The results of the Division Director's decision concerning approval or denial of the waiver within 10 days of the decision.

b. Hearings and appeals

i. In all cases where the Division Director has denied the waiver application, the applicant may request a hearing with the MVD Executive Hearing Office.

ii. All hearing procedures are defined in administrative rules R17-4-901 through R17-4-912.

c. The applicant:

i. Shall submit an application to the Division pursuant to 49 CFR 391.49 (a), (b), (c) and (d) as amended by this rule; and

- ii. May request a summary review or may appear in person or through counsel at the review.
- d. Waiver form.
 - i. The waiver form shall reflect the terms, conditions, or imitations of the waiver.
 - ii. The Division shall maintain the original waiver.
 - iii. The motor carrier shall retain a legible copy of the waiver form as long as the driver is employed as a driver and for 3 years thereafter.
 - iv. A driver to whom a waiver form has been granted shall have a legible copy of the waiver form in the driver's possession when driving a commercial motor vehicle.
- 5. Subpart F - Files and Records. 49 CFR 391.51 Driver qualification files. Paragraph (b)(2) is amended by adding the following text:

or the Waiver Board's Division Director's letter of notification, granting an intrastate waiver of physical disqualification, if a waiver is granted pursuant to this rule.
- 6. 49 CFR 391.64 Grandfathering for certain drivers participating in vision and diabetes waiver study programs. This section is amended to read:

49 CFR 391.64 Pilot study diabetes waiver program.

A pilot study program is created to process, monitor and evaluate the feasibility of establishing a waiver program for intrastate drivers who are disqualified under the provisions of 49 CFR 391.41(b)(3), but who are otherwise qualified. The pilot study program shall be administered by the medical review section, and may approve or deny applications for waivers.

The study program will initiate on the effective date of this rule amendment and terminate 2 years from that date. All waivers issued through the study program will terminate with the expiration of the study program. The Division Director may determine to extend the study, or determine that the results of the study warrant establishing a permanent waiver process.

Paragraph (a) is amended to read:

Insulin-controlled diabetics may be eligible to apply for a waiver restricted to the state of Arizona for the purpose of participating in the 2-year pilot study provided:

Paragraph (a)(2)(iii) is amended to read:

Submit blood glucose logs to the endocrinologist or medical examiner at the annual examination or at any time when directed by the medical review section.

Paragraph (a)(2)(vii) is added:

The driver shall have a safe driving record which meets the minimum requirements of safe driving as specified under applicable federal and state safety regulations and has no serious traffic violations, no periods of driver disqualification or reportable accidents for a period of three (3) years prior to submitting the waiver application.

Paragraph (a)(2)(viii) is added:

Submit a separate signed statement from an examining ophthalmologist that the applicant has been examined and that the applicant does not have unstable

proliferative diabetic retinopathy (that is, unstable advancing disease of blood vessels in the retina) and has stable acuity (at least 20/40 Snellen) in each eye, with or without corrective lenses.

Paragraph (b) is amended to read:

The Division Director may suspend for life the commercial vehicle operating privilege of any driver who, after issuance of a waiver under this section, fails to meet the conditions imposed by this section, or is found to have committed a serious traffic violations or been involved in a reportable accident related to such drivers medical condition.

Paragraph (c) is added:

The provisions of this section shall not be valid if enforcement of these provisions would result in the loss of or the disqualification for federal funding for any state agency or program.

Paragraph (d) is added:

An insulin dependent diabetic commercial driver license applicant shall provide:

- a. A board-certified or board-eligible endocrinologist with a complete medical history including the date insulin use began, all hospitalization reports, consultation notes for diagnostic examinations, special studies pertaining to the diabetes (and follow-up reports), and reports of any hypoglycemic insulin reactions within the prior 3 years.
- b. An examination by a board certified or board-eligible endocrinologist conducted after July 29, 1993. The complete medical examination shall consist of a comprehensive evaluation of the applicant's medical history and current status, including a review of:
 - i. Fasting blood studies glucose, glycosylated-hemoglobin/Hb Alc I including lab reference page and urinalysis performed during the last 6 months and
 - ii. Insulin dosages and types, diet utilized for control and any significant factors such as smoking, alcohol use, and other medications or drugs taken.
- c. A statement prepared and signed by the examining endocrinologist whose status (board-certified or board-eligible) is indicated. The signed statement shall include separate declarations indicating the following medical determinations:
 - i. The endocrinologist is familiar with the applicant's medical history for the past 3 years whether through actual treatment over that time or through consultation with a physician who has treated the applicant during that time.
 - ii. The applicant has been using insulin to control the diabetes from the date of the application back to the date the 3 years of driving experience began.
 - iii. The applicant does not have severe hypoglycemia (that is, episodes of altered consciousness requiring the assistance of another person to regain control).
 - iv. The applicant does not have hypoglycemia unawareness (that is, the inability to recognize the early symptoms of hypoglycemia such as sweating, anxiety, forceful heartbeat and light-headedness)
 - v. Within the prior 3 years, the applicant has not had a hypoglycemic reaction, at any time, that

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resulted in any change in mental status that would have been, in the endocrinologist's opinion, detrimental to safe driving.

- vi. The applicant's diabetic condition will not adversely affect his/her ability to operate a commercial motor vehicle.
- vii. The applicant has been educated in diabetes and its management thoroughly informed of and understands other procedures which shall be followed to monitor and manage his/her diabetes and what procedures should be followed if complications arise.

Paragraph (e) is added:

- d. An applicant for a commercial driver license who is an insulin dependent diabetic shall meet the following requirements:

- i. Has a driving record for that specific 3 year period that: Contains no suspensions or revocations of the applicant's driver license for the operation of any motor vehicle (including personal vehicles) except suspensions or revocations due to nonpayment of fines, contains no involvement in an accident (as defined in 49 CFR 390.5) for which the applicant received a citation for a moving traffic violation while operating a commercial motor vehicle, contains no convictions for a disqualifying offense described in 49 CFR 383.51, or more than 1 serious traffic violation defined in 49 CFR 383.51 while operating a commercial motor vehicle, and contains no more than 2 convictions for any other moving traffic violations while operating a commercial motor vehicle.
- ii. Shall immediately report any arrest, citation, or conviction to the MVD Medical Review Program. Failure to do so may result may result in a denial or rescission of the waiver.

- 7. Section 391.68 (Private motor carrier of passengers) is deleted.
- 8. Section 391.69 (Driver operating in Hawaii) is deleted
- 69. Subpart G - Limited Exemptions
49 CFR 391.71 Intrastate drivers of vehicles transporting combustible liquids. Exemptions in this Section are deleted.
- 10. Section 391.73 (Private motor carrier of passengers (business)) is deleted.

R17-4-435.03. Motor Carrier Safety: 49 CFR 391 Subpart H--Controlled Substance Testing 49 CFR 382 - Controlled substance and alcohol use testing

A. 49 CFR 391 as incorporated in these rules is amended as follows:

- 1. 49 CFR 391.81 Purpose and scope. Paragraph (b) is amended by deleting "Federal".
- 2. 49 CFR 391.83 Applicability. Paragraph (a) is amended to read:-

This subpart applies to all motor carriers as defined in A.R.S. § 28-2401, operating commercial motor vehicles as defined in subsection (3) of this rule.

- 3. 49 CFR 391.85 Definitions. The definition for "Commercial motor vehicle" in this section is amended to read: "Commercial motor vehicle" means a motor vehicle operated by a motor carrier which either:
 - a. Has a declared gross weight of 26,001 or more pounds;
 - b. Is designed to transport 16 or more people, including the driver; or
 - c. Is used in the transportation of hazardous materials in an amount which requires the vehicle to be placarded under R17-4-436. 49-
- 4. CFR 391.87 Notification of test results and recordkeeping. In paragraph (g), the term "federal highway administrator" means the Division Director.

49 CFR 382, as incorporated in these rules, is amended as follows:

- 1. 49 CFR 382.1 Applicability. Paragraph (a)(1) is amended to read:
The commercial driver's license requirements of the State of Arizona.
- 2. 49 CFR 382.115 Starting date for testing programs. This section is amended to read:
The controlled substance and alcohol use and testing requirements commence for all motor carriers on the date this rule goes into effect.
- 3. Paragraph (b) is deleted.
- 4. Paragraph (c) is deleted.

R17-4-435.04. Motor Carrier Safety: Amendments to 49 CFR 392 and 397

49 CFR 392 and 397 as incorporated in these rules are amended as follows:

- 1. 49 CFR 392.5 Intoxicating beverage. Paragraph (e) is amended to read:
Drivers who violate the terms of an out-of-service order under this Section shall be subject to the provisions and sanctions of A.R.S. § 28-2404 §232.
- 2. 49 CFR 392.30 Lighted lamps; moving vehicles. Paragraph (a) is amended to read:
During the period from sunset to sunrise;
- 3. Section 397.5 Attendance and surveillance of motor vehicles. Paragraph (d)(3) is amended to read:
A safe haven is an area specifically approved in writing by state or federal governmental authorities for the parking of unattended vehicles containing Class A or Class B explosives as defined in 49 CFR 173.53 "Definition of Class A explosives" and 173.88 "Definition of Class B explosives".

R17-4-435.05 Civil penalties

For the purpose of determining the amount of civil penalty for repeat findings of responsibility for the same class of violations involving vehicles which are required to be placarded, the higher level of civil penalty pursuant to A.R.S. § 28-2406 §238 shall apply.